



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## LOK SABHA

The following Bills were introduced in Lok Sabha on 10th August, 2017:—

### BILL No. 162 OF 2017

*A Bill to establish and incorporate a National Sports University in the State of Manipur, a specialised University first of its kind, to promote sports education in the areas of sports sciences, sports technology, sports management and sports coaching besides functioning as the national training centre for select sports disciplines by adopting best international practices and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the National Sports University Act, 2017.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,  
extent and  
commencement.

2. In this Act, unless the context otherwise requires,—

(a) “Academic and Activity Council” means the Academic and Activity Council of the University;

(b) “academic staff” means such categories of staff as are designated as academic staff by the Ordinances;

(c) “Board of Sports Studies” means the Board of Sports Studies of a Department of the University;

Definitions.

- (d) "Chancellor" means the Chancellor of the University;
- (e) "College" means a college or other academic Institution established or maintained by, or admitted to the privileges of, the University;
- (f) "Court" means the Court of the University;
- (g) "Department" means a Department of Studies and includes a Centre of Studies;
- (h) "employee" means any person appointed by the University and includes teachers and other staff of the University;
- (i) "Executive Council" means the Executive Council of the University;
- (j) "Finance Committee" means the Finance Committee of the University;
- (k) "Fund" means the University Fund referred to in section 30;
- (l) "Hall" means a unit of residence or of corporate life for the students of the University, or of an outlying campus or of a College or an Institution, maintained by the University;
- (m) "Head of the Department" means the head of any teaching department of the University;
- (n) "Institution" means an academic Institution, not being a college, maintained by or admitted to the privileges of, the University;
- (o) "outlying campus" means the campus of the University as may be established by it at any place within or outside India;
- (p) "Principal" means the Head of a College or an Institution maintained by the University and includes, where there is no Principal, the person for the time being duly appointed to act as Principal, and in the absence of the Principal, or the acting Principal, a Vice-Principal duly appointed as such;
- (q) "Regional Centre" means a Centre established or maintained by the University for the purpose of co-ordinating and supervising the work of Study Centres in any region and for performing such other functions as may be conferred on such centre by the Executive Council;
- (r) "Regulations" means the regulations made by any authority of the University under this Act for the time being in force;
- (s) "School" means a School of Studies of the University;
- (t) "section" means the section of this Act;
- (u) "State" includes a Union territory;
- (v) "Statutes" and "Ordinances" mean, respectively, the Statutes and the Ordinances of the University for the time being in force;
- (w) "Study Centre" means a centre established, maintained or recognised by the University for the purpose of advising, counseling, training or for rendering any other assistance required by the students;
- (x) "teachers of the University" means Professors, Associate Professors, Assistant Professors and such other persons as may be appointed for imparting instructions, training or conducting research in the University or in any outlying campus, College or Institution or Regional Centres and Study Centres maintained by the University and are designated as teachers by the Ordinances;
- (y) "University" means the National Sports University established and incorporated as a University under this Act;
- (z) "Vice-Chancellor" means the Vice-Chancellor of the University.

Establishment  
of University.

**3. (1)** There shall be established a University by the name of "National Sports University".

(2) The headquarters of the University shall be in the State of Manipur and it may establish or maintain outlying campuses, Colleges, Regional Centres and Study Centres at such other places in India as it may deem fit:

Provided that the University may, with the prior approval of the Central Government, also establish outlying campuses and Study Centres outside India.

(3) The first Chancellor, the first Vice-Chancellor and the first members of the Court, the Executive Council and the Academic and Activity Council, and all such persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of “National Sports University”.

(4) The University shall have perpetual succession and a common seal, and sue or be sued by the said name.

**4. The objects of the University shall be—**

Objects of  
University.

(i) to evolve as an institute of advanced study in the field of physical education and sports sciences;

(ii) to provide for research and development and dissemination of knowledge in physical education and sports sciences by providing specially designed academic and training programmes in various areas of physical education and sports sciences and training in advanced technologies of sports;

(iii) to strengthen physical education and sports training programmes to promote sports including traditional and tribal sports and games;

(iv) to establish centres and institutions of excellence for imparting state of the art educational training and research in the fields of physical education and sports sciences, sports technology and high performance training for all sports and games;

(v) to provide professional and academic leadership to other institutions in the field of physical education and sports sciences;

(vi) to provide vocational guidance and placement services in physical education, sports sciences, sports medicine, sports technology and other related fields;

(vii) to generate capabilities for the development of knowledge, skills and competences at various levels in the fields of physical education and sports sciences, sports technology and high performance training for all sports and games;

(viii) to generate capabilities to provide infrastructure of international standard for education, training and research in the areas related to physical education and sports sciences, sports technology and high performance training for all sports and games;

(ix) to prepare highly qualified professionals in the fields of physical education and sports sciences, sports technology and high performance training for all sports and games;

(x) to serve as a Centre of Excellence for the elite and other talented sports-persons of all sports and games and innovation in physical education and sports sciences and to carry out, endorse and propagate research;

(xi) to function as a leading resource centre for knowledge and development in the areas of physical education and sports sciences, sports technology and high performance training for all sports and games;

(xii) to provide international collaboration in the fields of physical education and sports sciences, sports technology and high performance training for all sports and games;

(xiii) to establish close linkage with sports academies, schools, colleges, sports and recreation clubs, sports associations and international federations for the purpose of teaching, training and research in physical education and sports sciences, sports technology and high performance training for all sports and games;

(xiv) to train talented athletes so as to help them to evolve into elite athletes of international level;

(xv) to make India become a sporting power;

(xvi) such other objects, not inconsistent with the provisions of this Act, which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Powers and  
functions of  
University.

**5. (I)** The University shall have the following powers and functions, namely:—

(i) to plan, design, develop and prescribe courses of study and conduct appropriate academic and training programmes in physical education and sports sciences including sports technology and to provide for instruction and training in such branches of learning as the University may, from time to time, determine and to make provisions for research and for the advancement and dissemination of knowledge;

(ii) to grant, subject to such conditions as the University may determine, diplomas or certificates to, and confer degrees or other academic distinctions on, persons, on the basis of examinations, evaluation or any method of testing, and to withdraw any such certificates, diplomas, degrees or other academic distinctions for good and sufficient cause;

(iii) to provide opportunities to the students of the University to participate in the sports tournaments and competitions in co-ordination with established International Sports Federations, National Sports Federations, Indian Olympic Association and Association of Indian Universities;

(iv) to have liaison or membership with various international professional organisations or bodies;

(v) to establish and maintain, with the prior approval of the Central Government, such outlying campuses, Regional Centres, specialised laboratories or other units for research, instruction and training as are, in the opinion of the University, necessary for the furtherance of its objects;

(vi) to establish, maintain or recognise Study Centres in the manner laid down by the Statutes;

(vii) to establish and maintain Colleges, Institutions and Halls;

(viii) to confer honorary degrees or other distinctions in the manner prescribed by the Statutes;

(ix) to institute Principalships, Professorships, Associate Professorships, Assistant Professorships and other teaching or academic positions, required by the University and to appoint persons to such Principalships, Professorships, Associate Professorships, Assistant Professorships or other teaching or academic positions;

(x) to appoint persons working in any University or academic institution, including those located outside the country, as teachers of the University for a specified period;

(xi) to create administrative, ministerial and other posts and to make appointments thereto;

(xii) to co-operate or collaborate or associate with any other University or authority or Institution of higher learning, including those located outside the country, in such manner and for such purposes as the University, may determine;

(xiii) to provide facilities through the distance education system to such persons and in such manner as may be prescribed by the Statutes;

(xiv) to institute and award fellowships, scholarships, studentships, medals and prizes for raising academic standards and research;

(xv) to organise and to undertake extramural studies, training and extension services;

(xvi) to make provision for research and advisory services and for that purpose, to enter into such arrangements with other institutions, industrial or other organisations, as the University may deem necessary;

(xvii) to organise and conduct refresher courses, workshops, seminars and other programmes for teachers, evaluators, other academic staff and students;

(xviii) to appoint on contract or otherwise visiting Professors, Emeritus

Professors, Consultants and such other persons who may contribute to the advancement of the objects of the University;

(xix) to determine standards of admission to the University, which may include examination, evaluation or any other method of testing;

(xx) to demand and receive payment of fees and other charges;

(xxi) to supervise the residences of the students of the University and to make arrangements for promoting their health and general welfare;

(xxii) to lay down conditions of service of all categories of employees, including their code of conduct;

(xxiii) to regulate and enforce discipline among the students and the employees, and to take such disciplinary measures in this regard as may be deemed by the University to be necessary;

(xxiv) to make arrangements for promoting the health and general welfare of the employees;

(xxv) to receive benefactions, donations and gifts and to acquire, hold and manage, and to dispose of, with the previous approval of the Central Government, any property, movable or immovable, including trust and endowment properties, for the purposes of the University;

(xxvi) to borrow, with the previous approval of the Central Government, on the security of the property of the University, money for the purposes of the University;

(xxvii) to conduct innovative experiments and promote new methods and technologies in the fields of physical education, sports sciences, sports medicine, sports technology, and sports management and other related fields;

(xxviii) to purchase or to take on lease any land or building or sports complex or sports infrastructure and scientific sports research equipment or indoor stadium or works which may be necessary or convenient for the purposes of the University, on such terms and conditions as it may think fit and proper and to construct, alter and maintain any such building or work;

(xxix) to start any new allied course or research programme or diploma or training programme and discontinue any course or training programme;

(xxx) to invest the funds of the University in or upon such securities and transpose any investment from time to time in such manner as it may deem fit in the interest of the University;

(xxxi) to execute conveyances regarding transfers, mortgages, leases, licenses, agreements and other conveyances in respect of the property, movable or immovable, including Government securities, belonging to the University or to be acquired for the purposes of the University, after taking prior permission of the Central Government;

(xxxii) to act as a technical advisory body to Government of India and other National Organisations, State Governments and National Sports Federations on all matters related to sports;

(xxxiii) to provide training, coaching and other back up to high level sports persons for achieving success in different national and international sports competitions;

(xxxiv) to give effect to the procedures and standards provided under the Khelo India Scheme or the National Sports Talent Search and Identification Scheme;

(xxxv) to confer autonomous status on a College or an Institution in the manner laid down by the Statutes;

(xxxvi) to admit to its privileges any College or Institution in or outside India subject to such conditions as may be laid down by the Statutes;

Provided that no College or Institution shall be so admitted except with the prior approval of the Central Government;

(xxxvii) to provide for the preparation of instructional and training materials, including films, cassettes, tapes, video cassettes and other software;

(xxxviii) to recognise persons for imparting instructions in any College or Institution admitted to the privileges of the University; and

(xxxix) to do all such other acts and things as may be necessary, incidental or conducive to the attainment of all or any of its objects.

(2) The University shall in the exercise of its powers have jurisdiction over the whole of India and to the outlying campuses and Study Centres outside India.

(3) In exercising its powers referred to in sub-section (1), it shall be the endeavour of the University to maintain an all-India character and high standards of teaching, training and research and the University shall, among other measures which may be necessary for the said purpose, take, in particular, the following measures, namely:—

(i) admissions of students and recruitment of faculty shall be made on all-India basis through appropriate procedures approved by the Executive Council of the University;

(ii) foreign students shall be admitted to various courses and programmes by the University as per the policy and schemes of the Government of India and the procedure approved by the Executive Council of the National Sports University;

(iii) inter-University mobility of faculty with portable pension scheme benefits, if any, and protection of seniority shall be encouraged;

(iv) semester system, continuous evaluation and choice-based credit system shall be introduced and the University shall enter into agreement with other Universities and academic Institutions for credit transfer and joint degree programmes;

(v) innovative courses and programmes of studies shall be introduced with a provision for periodic review and restructuring;

(vi) active participation of students shall be ensured in all academic activities of the University, including evaluation of teachers;

(vii) accreditation shall be obtained from the National Assessment and Accreditation Council or any other accrediting agency at the national level; and

(viii) e-governance shall be introduced with an effective management information.

University to be open to all castes, creed, race or class.

6. The University shall be open to persons of any sex and of whatever caste, creed, race or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle such person to be appointed as a teacher of the University or to hold any other office therein or to be admitted as a student in the University or to graduate thereat or to enjoy or exercise any privilege thereof:

Provided that nothing in this section shall be deemed to prevent the University from making special provisions for the employment or admission of women, persons with disabilities or of persons belonging to the weaker sections of the society and, in particular, of the Scheduled Castes, the Scheduled Tribes and the other socially and educationally backward classes of citizens:

Provided further that no such special provision shall be made on the ground of domicile.

Central Government to review work and progress of University.

7. (1) The Central Government may, from time to time, appoint one or more persons to review the work and progress of the University, including outlying campuses, Colleges, Institutions, Regional Centres and Study Centres maintained by it, and to submit a report thereon; and upon receipt of that report, the Central Government may, after obtaining the views of the Executive Council thereon through the Vice-Chancellor, take such action and issue such directions, as it considers necessary, in respect of any of the matters dealt with in the report and the University shall abide by such action and be bound to comply with such directions.

(2) The Central Government shall have the right to cause an inspection to be made by such person or persons, as it may direct, of the University, its buildings, sports complexes,



libraries, laboratories and equipment, and of any outlying campus or College or Institution or Regional Centres or Study Centres maintained by the University; and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the administration or finances of the University, Colleges or Institutions or Regional Centres or Study Centres.

(3) The Central Government shall, in every matter referred to in sub-section (2), give notice of its intention to cause an inspection or inquiry to be made, to the University, and the University shall have the right to make such representations to the Central Government, as it may consider necessary.

(4) After considering the representations, if any, made by the University, the Central Government may cause to be made such inspection or inquiry as is referred to in sub-section (3).

(5) Where any inspection or inquiry has been caused to be made by the Central Government, the University shall be entitled to appoint a representative, who shall have the right to be present and be heard at such inspection or inquiry.

(6) The Central Government may, if the inspection or inquiry is made in respect of the University or any outlying campus or College or Institution or Regional Centre or Study Centre established or maintained by it, address the Vice-Chancellor with reference to the result of such inspection or inquiry together with such views and advice with regard to the action to be taken thereon, as the Central Government may be pleased to offer, and on receipt of address made by the Central Government, the Vice-Chancellor shall communicate to the Executive Council the views of the Central Government with such advice as the Central Government may offer upon the action to be taken thereon.

(7) The Executive Council shall communicate through the Vice-Chancellor to the Central Government such action, if any, as it proposes to take or has been taken upon the result of such inspection or inquiry.

(8) Where, the Executive Council does not, within a reasonable time, take action to the satisfaction of the Central Government, it may, after considering any explanation furnished or representation made by the Executive Council, issue such directions, as it may think fit, and the Executive Council shall comply with such directions.

(9) Without prejudice to the foregoing provisions of this section, the Central Government may, by order in writing, annul any proceeding of the University which is not in conformity with the provisions of this Act or the Statutes or the Ordinances:

Provided that before making any such order, the Central Government shall call upon the Vice-Chancellor to show cause why such an order should not be made, and, if any cause is shown within a reasonable time, it shall consider the same.

(10) The Central Government shall have such other powers, in respect of the affairs of the University, as may be prescribed by the Statutes.

**8.** The following shall be the officers of the University, namely:—

Officers of the  
University.

- (a) the Chancellor;
- (b) the Vice-Chancellor;
- (c) the Deans of Schools ;
- (d) the Registrar;
- (e) the Finance Officer;
- (f) the Controller of Examinations ;
- (g) the Librarian; and
- (h) such other officers as may be declared by the Statutes to be the officers of the University.

**9.** (1) The Chancellor shall be appointed by the Central Government in such manner as may be prescribed by the Statutes. Chancellor.

(2) The Chancellor shall, by virtue of his office, be the head of the University and shall, if present, preside at the Convocations of the University held for conferring degrees and other ceremonial functions and also the meetings of the Court.

**10.** (1) The Vice-Chancellor shall be appointed by the Central Government in such manner as may be prescribed by the Statutes. Vice-Chancellor.

(2) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall exercise general supervision and control over the affairs of the University and give effect to the decisions of all the authorities of the University.

(3) The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall appraise such authority at its next meeting the action taken by him on such matter:

Provided that if the authority concerned is of the opinion that such action ought not to have been taken, it may refer the matter to the Central Government whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by the action taken by the Vice-Chancellor under this sub-section shall have the right to represent against such action to the Executive Council within three months from the date on which decision on such action is communicated to him and thereupon the Executive Council may confirm, modify or reverse the action taken by the Vice-Chancellor.

(4) Where the Vice-Chancellor is of the opinion that any decision taken by any authority of the University is beyond the powers of the authority conferred under the provisions of this Act or the Statutes or the Ordinances, or that any decision taken by the authority is not in the interest of the University, he may ask the authority concerned to review its decision within sixty days of such decision and if the authority refuses to review the decision either in whole or in part or no decision is taken by it within the said period of sixty days, the matter shall be referred to the Central Government whose decision thereon shall be final.

(5) The Vice-Chancellor shall exercise such other powers and perform such other duties as may be prescribed by the Statutes or the Ordinances.

Deans of  
Schools.

**11.** Every Dean of School shall be appointed in such manner, and on such terms and conditions of service, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

Registrar.

**12.** (1) The Registrar shall be appointed in such manner, and on such terms and conditions of service, as may be prescribed by the Statutes.

(2) The Registrar shall have the power to enter into agreements, sign documents and authenticate records on behalf of the University, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

Finance  
Officer.

**13.** The Finance Officer shall be appointed in such manner, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

Controller of  
Examinations.

**14.** The Controller of Examinations shall be appointed in such manner and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

Librarian.

**15.** The Librarian shall be appointed in such manner and on such terms and conditions of service, and shall exercise such powers and perform such duties, as may be prescribed by the Statutes.

Other officers.

**16.** The manner of appointment and powers and duties of other officers of the University shall be prescribed by the Statutes.

Authorities of  
University.

**17.** The following shall be the authorities of the University, namely:—

(a) the Court;

(b) the Executive Council;

(c) the Academic and Activity Council;

(d) the Board of Sports Studies;

(e) the Finance Committee;

(f) such other authorities as may be declared by the Statutes to be the authorities of the University.



**18.** (1) The constitution of the Court and the term of office of its members shall be prescribed by the Statutes. The Court.

(2) Subject to the provisions of this Act, the Court shall have the following powers and functions, namely:—

(a) to review, from time to time, the broad policies and programmes of the University, and to suggest measures for the improvement and development of the University;

(b) to consider and pass resolutions on the annual report and the annual accounts of the University and the audit report on such accounts;

(c) to advise the Central Government in respect of any matter which may be referred to it for advice; and

(d) to perform such other functions as may be prescribed by the Statutes.

**19.** (1) The Executive Council shall be the principal executive body of the University. Executive Council.

(2) The constitution of the Executive Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes.

**20.** (1) The Academic and Activity Council shall be the principle academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, co-ordinate and exercise general supervision over the academic policies of the University. Academic and Activity Council.

(2) The constitution of the Academic and Activity Council, the term of office of its members and its powers and functions shall be prescribed by the Statutes:

Provided that the Academic and Activity Council shall have sports persons who have achieved distinction in Olympics or world championships.

**21.** The constitution, powers and functions of the Board of Sports Studies shall be prescribed by the Statutes. Board of Sports Studies.

**22.** The constitution, powers and functions of the Finance Committee shall be prescribed by the Statutes. Finance Committee.

**23.** The constitution, powers and functions of other authorities, as may be declared by the Statutes to be the authorities of the University, shall be prescribed by the Statutes. Other authorities of University.

**24.** Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:— Power to make Statutes.

(a) the constitution, powers and functions of authorities and other bodies of the University, as may be constituted from time to time;

(b) the appointment and continuance in office of the members of the said authorities and bodies, the filling up of vacancies of members, and all other matters relating to those authorities and other bodies for which it may be necessary or desirable to provide;

(c) the appointment, powers and duties of the officers of the University and their emoluments;

(d) the appointment of teachers, academic staff and other employees of the University, the emoluments and conditions of service;

(e) the appointment of teachers and academic staff working in any other University or organisation for a specific period for undertaking a joint project;

- (f) the conditions of service of employees including provisions for pension, insurance, provident fund, the manner of termination of service and disciplinary action;
- (g) the principles governing the seniority of service of the employees of the University;
- (h) the procedure for arbitration in cases of dispute between employees or students and the University;
- (i) the procedure for appeal to the Executive Council by any employee or student against the action of any officer or authority of the University;
- (j) the conferment of autonomous status on a College or an Institution or a Department;
- (k) the establishment and abolition of Schools, Departments, Centres, Halls, Colleges, Institutions, Regional Centres and Study Centres;
- (l) the conferment of honorary degrees;
- (m) the conferment and withdrawal of degrees, diplomas, certificates and other academic distinctions;
- (n) the management of Colleges, Institutions, Regional Centres and Study Centres established and maintained by the University;
- (o) the delegation of powers vested in the authorities or officers of the University;
- (p) the maintenance of discipline among the employees and students; and
- (q) all other matters which by this Act are to be, or may be, provided for by the Statutes.

Statutes how  
to be made.

**25. (1)** The first Statutes are those set out in the Schedule to this Act.

(2) The Executive Council may, from time to time, make new or additional Statutes or may amend or repeal any Statutes referred to in sub-section (1):

Provided that the Executive Council shall not make, amend or repeal any Statutes affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion in writing on proposed changes, and any opinion so expressed shall be considered by the Executive Council.

(3) Every new Statutes amending or repealing existing Statutes shall require the approval of the Central Government and unless so approved, they shall be invalid.

(4) Notwithstanding anything contained in the foregoing sub-sections, the Central Government may make new or additional Statutes or amend or repeal the Statutes referred to in sub-section (1) during the period of three years immediately after the commencement of this Act:

Provided that the Central Government may, on the expiry of the said period of three years, make, within one year from the date of such expiry, such detailed Statutes as it may consider necessary and such detailed Statutes shall be laid before both Houses of Parliament.

(5) Notwithstanding anything contained in this section, the Central Government may direct the University to make provisions in the Statutes in respect of any matter specified by it and if the Executive Council is unable to implement such direction within sixty days of its receipt, the Central Government may, after considering the reasons, if any, communicated by the Executive Council for its inability to comply with such direction, make or amend the Statutes suitably.

Power to  
make  
Ordinances.

**26. (1)** Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:—

- (a) the admission of students to the University and their enrolment as such;

- (b) the courses of study and their duration to be laid down for all degrees, diplomas and certificates of the University;
- (c) the medium of instruction and examination;
- (d) the award of degrees, diplomas, certificates and other academic distinctions, the qualifications for the same and the means to be taken relating to the granting and obtaining of the same;
- (e) the fees to be charged for courses of study in the University and for admission to examinations, degrees and diplomas of the University;
- (f) the conditions for award of fellowship, scholarships, studentships, medals and prizes;
- (g) the conduct of examinations, including the term of office and manner of appointment and the duties of examining bodies, examiners and moderators;
- (h) the conditions of residence of the students of the University;
- (i) the special arrangements, if any, which may be made for the residence and teaching of women students and the prescribing of special courses of studies for them;
- (j) the establishment of Centres of Studies, Board of Studies, Specialised Laboratories and other Committees;
- (k) the manner of co-operation and collaboration with other Universities, Institutions and other agencies including learned bodies or associations;
- (l) the creation, composition and functions of any other body which is considered necessary for improving the academic life of the University;
- (m) the institution of fellowships, scholarships, studentships, medals and prizes;
- (n) the setting-up of a machinery for redressal of grievances of employees and students; and
- (o) all other matters which by this Act, or, the Statutes, are to be, or, may be, provided for by the Ordinances.

(2) The first Ordinances shall be made by the Vice-Chancellor with previous approval of the Executive Council and the Ordinances so made may also be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes.

**27.** The authorities of the University may make Regulations, consistent with this Act, the Statutes and the Ordinances, for the conduct of their own business and that of the Committees, if any, appointed by them and not provided for by this Act, the Statutes or the Ordinances, in the manner prescribed by the Statutes. Regulations.

**28.** (1) The annual report of the University shall be prepared under the directions of Executive Council, which shall include, among other matters, the steps taken by the University towards the fulfilment of its objects and shall be submitted to the Court on or before such date as may be prescribed by the Statutes and the Court shall consider the report in its annual meeting. Annual report.

(2) The Court shall submit the annual report to the Central Government along with its comments, if any.

(3) The Central Government shall, as soon as may be, cause a copy of the annual report to be laid before both the Houses of Parliament.

**29.** (1) The annual accounts and balance-sheet of the University shall be prepared under the directions of the Executive Council and shall, once at least every year and at intervals of not more than fifteen months, be audited by the Comptroller and Auditor-General of India or by such persons as he may authorise in this behalf. Annual accounts.

(2) A copy of the annual accounts together with the audit report thereon shall be submitted to the Court and the Central Government along with the observations of the Executive Council.

(3) Any observations made by the Central Government on the annual accounts shall be brought to the notice of the Court and the observations of the Court, if any, shall, after being considered by the Executive Council, be submitted to the Central Government.

(4) The Central Government shall, as soon as may be, cause the copy of the annual accounts together with the audit report to be laid before both Houses of Parliament.

(5) The audited annual accounts after having been laid before both Houses of Parliament shall be published in the Gazette of India.

Fund of  
University.

**30.** (1) There shall be a University Fund which shall include—

(a) any contribution or grant made by the University Grants Commission or the Central Government;

(b) any contribution or grant made by the State Government;

(c) any contribution made by Government, semi-Government or autonomous bodies;

(d) any loans, gifts, bequests, donations, endowments or other grants, if any;

(e) income received by the University from fees and charges; and

(f) the moneys received by the University from the collaborating industries in terms of the provisions of the Memorandum of Understanding entered between the University and the industry for the establishment of sponsored Chairs, fellowships or infrastructure facilities of the University; and

(g) amounts received in any other manner from any other source.

(2) All funds of the University shall be deposited in such banks or invested in such manner as the Board may decide on the recommendation of the Finance Committee.

(3) The funds of the University shall be applied towards the expenses of the University including expenses incurred in the exercise of its powers and discharge of its functions by or under this Act.

Returns and  
information.

**31.** The University shall furnish to the Central Government such returns or other information with respect to its property or activities, within such period, as the Central Government may, from time to time, require.

Conditions of  
service of  
employees,  
etc.

**32.** (1) Every employee of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the employee concerned.

(2) Any dispute arising out of the contract between the University and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the employee concerned and an umpire appointed by the Central Government.

(3) The decision of the Tribunal shall be final and no suit shall lie in any civil court in respect of the matters decided by the Tribunal:

Provided that nothing in this sub-section shall preclude the employee from availing of the judicial remedies available under articles 32 and 226 of the Constitution.

(4) Every request made by the employee under sub-section (2) shall be deemed to be a submission to arbitration upon the terms of this section within the meaning of the Arbitration and Conciliation Act, 1996.

(5) The procedure for regulating the work of the Tribunal shall be prescribed by the Statutes.

**33.** (1) Any student or candidate for an examination whose name has been removed from the rolls of the University by the orders or resolution of the Vice-Chancellor, Discipline Committee or Examination Committee, as the case may be, and who has been debarred from appearing at the examinations of the University for more than one year, may, within ten days of the date of receipt of such orders or copy of such resolution by him, appeal to the Executive Council and the Executive Council may confirm, modify or reverse the decision of the Vice-Chancellor or the Committee, as the case may be.

Procedure of appeal and arbitration in disciplinary cases against students.

(2) Any dispute arising out of any disciplinary action taken by the University against a student shall, at the request of such student, be referred to a Tribunal of Arbitration and the provisions of sub-sections (2), (3), (4) and (5) of section 32 shall, as far as may be, apply to a reference made under this sub-section.

**34.** Every employee or student of the University or of a College or an Institution or a Regional Centre or a Study Centre established or maintained by the University shall, notwithstanding anything contained in this Act, have a right to appeal within such time as may be prescribed by the Statutes, to the Executive Council against the decision of any officer or authority of the University, or of the Principal or the management of any College or an Institution or Regional Centre or Study Centre, as the case may be, and thereupon, the Executive Council may confirm, modify or reverse the decision appealed against.

Right to appeals.

**35.** (1) The University shall constitute for benefit of its employees such provident fund or any other similar fund or provide such insurance schemes as it may deem fit, in such manner and subject to such conditions, as may be prescribed by the Statutes.

Provident and pension funds.

19 of 1925.

(2) Where such provident fund or other similar fund has been so constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 shall apply to such fund, as if it were a Government provident fund.

**36.** If any question arises as to whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Central Government whose decision thereon shall be final.

Disputes as to constitutions of authorities and bodies.

**37.** All casual vacancies among the members (other than *ex officio* members) of any authority or other body of the University shall be filled, as soon as may be, by the person or body who appoints, elects or co-opts the member whose place has become vacant and the persons appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

Filling of casual vacancies.

**38.** No act or proceedings of any authority or other body of the University shall be invalid merely by reason of the existence of a vacancy or vacancies among its members.

Proceedings of authorities or bodies not invalidated by vacancies.

**39.** No suit or other legal proceedings shall lie against any officer or other employee of the University for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act, the Statutes or the Ordinances.

Protection of action taken in good faith.

1 of 1872.

**40.** Notwithstanding anything contained in the Indian Evidence Act, 1872 or in any other law for the time being in force, a copy of any receipt, application, notice, order, proceeding or resolution of any authority or other body of the University, or any other document in possession of the University, or any entry in any register duly maintained by the University, if certified by the Registrar, shall be received as *prima facie* evidence of such receipt, application, notice, order, proceeding, resolution or document or the existence of entry in the register and shall be admitted as evidence of the matters and transactions therein where the original thereof would, if produced, have been admissible in evidence.

Mode of proof of University record.

**41.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty:

Powers to remove difficulties.

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order.

Statutes,  
Ordinances  
and Regula-  
tions to be  
published in  
the Official  
Gazette and to  
be laid before  
Parliament.

**42.** (1) Every Statute, Ordinance or Regulation made under this Act shall be published in the Official Gazette.

(2) Every Statute, Ordinance or Regulation made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Statute, Ordinances or Regulations or both Houses agree that the Statute, Ordinances or Regulations should not be made, the Statute, Ordinances or Regulations shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Statute, Ordinances or Regulations.

(3) The power to make Statutes, Ordinances or Regulations shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the Statutes, Ordinances or Regulations or any of them but no retrospective effect shall be given to any Statutes, Ordinances or Regulations so as to prejudicially affect the interests of any person to whom such Statutes, Ordinances or Regulations may be applicable.

Transitional  
provisions.

**43.** Notwithstanding anything contained in this Act and the Statutes,—

(a) the first Vice-Chancellor shall be appointed by the Central Government in such manner and on such conditions as may be deemed fit and the said officer shall hold office for such term, not exceeding five years, as may be specified by the Central Government;

(b) the first Registrar and the first Finance Officer shall be appointed by the Central Government and each of the said officers shall hold office for a term of three years;

(c) the first Court and the first Executive Council shall consist of not more than thirty-one members and eleven members, respectively, who shall be nominated by the Central Government and shall hold office for a term of three years; and

(d) the first Academic and Activity Council shall consist of not more than twenty-one members, who shall be nominated by the Central Government and they shall hold office for a term of three years:

Provided that if any vacancy occurs in the above offices or authorities, the same shall be filled by appointment or nomination, as the case may be, by the Central Government and the person so appointed or nominated shall hold office for so long as the officer or member in whose place he is appointed or nominated would have held office, if such vacancy had not occurred.



## THE SCHEDULE

(See section 25)

## The Statutes of the University

1. (1) The Chancellor shall be appointed by the Central Government from a panel of names of not less than three persons recommended by the Executive Council: Chancellor.

Provided that if the Central Government does not approve any of the persons included in the panel, it may call for an extended fresh panel.

(2) The Chancellor shall be an eminent person in the field of sports who shall either be a sports person himself or a Sports Administrator or a Sports Academician.

(3) The Chancellor shall hold office for the term of five years and shall not be eligible for reappointment:

Provided that notwithstanding the expiry of his term of office, the Chancellor shall continue to hold office until his successor enters upon his office.

2. (1) The Vice-Chancellor shall be appointed by the Central Government from out of a panel recommended by a Committee as constituted under clause (2): Vice-Chancellor.

Provided that if the Central Government does not approve any of the persons included in the panel, it may call for an extended fresh panel.

(2) The Committee referred to in clause (1) shall consist of five persons, out of whom three shall be nominated by the Executive Council and two by the Central Government, and one of the nominees of the Central Government shall be the convener of the Committee:

Provided that none of the members of the Committee shall be an employee of the University or of a College or Institution or Regional Centre or Study Centre established or maintained by the University or a member of any authority of the University.

(3) The Vice-Chancellor shall be a whole-time salaried officer of the University.

(4) The Vice-Chancellor shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of seventy year, whichever is earlier, and he shall not be eligible for reappointment:

Provided that notwithstanding the expiry of the said period of five years, he shall continue in office until his successor is appointed and enters upon his office:

Provided further that the Central Government may direct any Vice-Chancellor after his term has expired to continue in office for such period, not exceeding a total period of one year, as may be specified by it:

Provided also that when the office of the Vice-Chancellor becomes vacant due to death, resignation or otherwise, or, as the case may be, due to illness or such other cause, the Executive Council may appoint the senior-most Dean to perform the functions of the Vice-Chancellor until a new Vice-Chancellor is appointed or, as the case may be, the existing Vice-Chancellor resumes his duties.

(5) Notwithstanding anything contained in clause (4), the Central Government may, at any time after the Vice-Chancellor has entered upon his office, by an order in writing, remove the Vice-Chancellor from office on grounds of incapacity, misconduct or violation of statutory provisions:

Provided that no such order shall be made by the Central Government unless the Vice-Chancellor has been given a reasonable opportunity of showing cause against the action proposed to be taken against him:

Provided further that the Central Government may, at any time before making such order, place the Vice-Chancellor under suspension, pending enquiry.

(6) The emoluments and other conditions of service of the Vice-Chancellor shall be as follows:—

(i) The Vice-Chancellor shall be paid a monthly salary and allowances, other than house rent allowance, at the rates fixed by the Central Government from time to time and he shall be entitled, without payment of rent, to use a furnished residence throughout his term of office and no charge shall fall on the Vice-Chancellor in respect of the maintenance of such residence.

(ii) The Vice-Chancellor shall be entitled to such terminal benefits and allowances as may be fixed by the Central Government from time to time:

Provided that where an employee of the University, or of a College, Institution, Regional Centre or Study Centre established or maintained by the University, or of any other University or any College or Institution admitted to the privileges of, the University or such other University is appointed as the Vice-Chancellor, he may be allowed to continue to contribute to any provident fund of which he is a member and the University shall contribute to the account of such person in that provident fund at the same rate at which the person had been contributing immediately before his appointment as the Vice-Chancellor:

Provided further that where such employee had been a member of any pension scheme, the University shall make the necessary contribution to such scheme.

(iii) The Vice-Chancellor shall be entitled to travelling allowance at such rates as may be fixed by the Executive Council.

(iv) The Vice-Chancellor shall be entitled to leave on full pay at the rate of thirty days in a calendar year and the leave shall be credited to his account in advance in two half-yearly instalments of fifteen days each on the first day of January and July every year:

Provided that if the Vice-Chancellor assumes or relinquishes charge of the office of the Vice-Chancellor during the currency of a half year, the leave shall be credited proportionately at the rate of two and-a-half days for each completed month of service.

(v) In addition to the leave referred to in sub-clause (iv), the Vice-Chancellor shall also be entitled to half-pay leave at the rate of twenty days for each completed year of service, and half-pay leave may also be availed of as commuted leave on full pay on medical certificate:

Provided that when such commuted leave is availed of, twice the amount of half-pay leave shall be debited against half-pay leave due.

Powers and  
duties of  
Vice-  
Chancellor.

3. (1) The Vice-Chancellor shall be *ex officio* Chairman of the Executive Council, the Academic and Activity Council and the Finance Committee and shall, in the absence of the Chancellor, preside at the Convocations held for conferring degrees and at meetings of the Court.

(2) The Vice-Chancellor shall be entitled to be present at, and address, any meeting of any authority or other body of the University, but shall not be entitled to vote thereat unless he is a member of such authority or body.

(3) It shall be the duty of the Vice-Chancellor to see that this Act, the Statutes, the Ordinances and the Regulations are duly observed and he shall have all the powers necessary to ensure such observance.

(4) The Vice-Chancellor shall have all the powers necessary for the proper maintenance of discipline in the University and he may delegate any such powers to such person or persons as he deems fit.

(5) The Vice-Chancellor shall have the power to convene or cause to be convened the meetings of the Executive Council, the Academic and Activity Council and the Finance Committee.

Deans of  
Schools.

4. (1) Every Dean of School shall be appointed by the Vice-Chancellor from amongst the Professors in the School by rotation in order of seniority for a period of three years:

Provided that in case there is only one Professor or no Professor in a School, the Dean shall be appointed, for the time being, from amongst the Professor, if any and the Associate Professors in the School by rotation in the order of seniority:

Provided further that a Dean on attaining the age of sixty-five years shall cease to hold office as such.

(2) When the office of the Dean is vacant or when the Dean is, by reason of illness, absence or any other cause, unable to perform duties of his office, the duties of the office shall be performed by the senior-most Professor or Associate Professor, as the case may be, in the School.

(3) The Dean shall be the Head of the School and shall be responsible for the conduct and maintenance of the standards of teaching and research in the School and shall have such other functions as may be prescribed by the Ordinances.

(4) The Dean shall have the right to be present and to speak at any meeting of the Boards of Sports Studies or Committees of the School, as the case may be, but shall not have the right to vote thereat unless he is a member thereof.

5. (1) The Registrar shall be appointed by the Executive Council on the recommendation of a Selection Committee constituted for the purpose and shall be whole-time salaried officer of University.

Registrar.

(2) The Registrar shall be appointed for a term of five years and shall be eligible for reappointment.

(3) The emoluments and other terms and conditions of service of the Registrar shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Registrar shall retire on attaining the age of sixty-two years.

(4) When the office of the Registrar is vacant or when the Registrar is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) (a) The Registrar shall have power to take disciplinary action against such of the employees, excluding teachers and other academic staff, as may be specified in the order of the Executive Council and to suspend them pending inquiry, to administer warnings to them or to impose on them the penalty of censure or the withholding of increment:

Provided that no such penalty shall be imposed unless the person has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(b) An appeal shall lie to the Vice-Chancellor against any order of the Registrar imposing any of the penalties specified in sub-clause (a).

(c) In a case where the inquiry discloses that a punishment beyond the power of the Registrar is called for the Registrar shall, upon the conclusion of the inquiry, make a report to the Vice-Chancellor along with his recommendation:

Provided that an appeal shall lie to the Executive Council against an order of the Vice-Chancellor imposing any penalty.

(6) The Registrar shall be *ex officio* Secretary of the Executive Council and the Academic and Activity Council but shall not be deemed to be member of either of these authorities and he shall be *ex officio* Member-Secretary of the Court.

(7) It shall be the duty of the Registrar—

(a) to be the custodian of the records, the common seal and such other property of the University as the Executive Council shall commit to his charge;

(b) to issue all notices convening meetings of the Court, the Executive Council, the Academic and Activity Council and of any Committee appointed by those authorities;

(c) to keep the minutes of all the meetings of the Court, the Executive Council, the Academic and Activity Council and of any Committees appointed by those authorities;

(d) to conduct the official correspondence of the Court, the Executive Council and the Academic and Activity Council;

(e) to supply to the Central Government, copies of the agenda of the meetings of the authorities of the University as soon as they are issued and the minutes of such meetings;

(f) to represent the University in suits or proceedings by or against the University, sign powers of attorney and verify pleadings or depute his representative for the purpose; and

(g) to perform such other duties as may be specified in the statutes, the Ordinances or Regulations or as may be required from time to time by the Executive Council.

Finance  
Officer.

6.(1) The Finance Officer shall be appointed by the Executive Council on the recommendations of Selection Committee constituted for the purpose and shall be a whole-time salaried officer of the University.

(2) The Finance Officer shall be appointed for a term of five years and shall be eligible for reappointment.

(3) The emoluments and other terms and conditions of service of the Finance Officer shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Finance Officer shall retire on attaining the age of sixty-two years.

(4) When the office of the Finance Officer is vacant or when the Finance Officer is, by reason of illness, absence or any other cause, unable to perform the duties of his office, the duties of the office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) The Finance Officer shall be *ex officio* Secretary of the Finance Committee, but shall not be deemed to be a member of such Committee.

(6) The Finance Officer shall —

(a) exercise general supervision over the funds of the University and shall advise it as regards its financial policy; and

(b) perform such other financial function as may be assigned to him by the Executive Council or as may be prescribed by the Statutes or the Ordinances.

(7) Subject to the control of the Executive Council, the Finance Officer shall—

(a) hold and manage the property and investments of the University including trust and endowed property;

(b) ensure that the limits fixed by the Executive Council for recurring and non-recurring expenditure for a year are not exceeded and that all moneys are expended on the purpose for which they are granted or allotted;

(c) be responsible for the preparation of annual accounts and the budget of the University and for their presentation to the Executive Council;

(d) keep a constant watch on the state of the cash and bank balances and on the state of investments;

(e) watch the progress of the collection of revenues and advise on the methods of collection employed;

(f) ensure that the registers of buildings, land, furniture and equipment are maintained up to date and that stock-checking is conducted, of equipment and other consumable materials in all offices, Departments, Centres and Specialised Laboratories;

(g) bring to the notice of the Vice-Chancellor any unauthorised expenditure and other financial irregularities and suggest disciplinary action against persons at fault; and

(h) call for from any office, Department, Centre, Laboratory, College or Institution, Regional Centre or Study Centre established or maintained by the University, any information or returns that he may consider necessary for the performance of his duties.

(8) Any receipt given by the Finance Officer or the person or persons duly authorised in this behalf by the Executive Council for any money payable to University shall be sufficient discharge for payment of such money.

7. (1) The Controller of Examinations shall be appointed by the Executive Council on the recommendations of a Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University. Controller of Examinations.

(2) The Controller of Examinations shall be appointed for a term of five years and shall be eligible for reappointment.

(3) The emoluments and other terms and conditions of service of the Controller of Examinations shall be such as may be prescribed by the Executive Council from time to time:

Provided that the Controller of Examinations shall retire on attaining the age of sixty-two years.

(4) When the office of the Controller of Examinations is vacant or when the Controller of Examinations is, by reason of illness, absence or any other cause, unable to perform the duties of his office shall be performed by such person as the Vice-Chancellor may appoint for the purpose.

(5) The Controller of Examinations shall arrange for and superintend the examinations of the University in the manner prescribed by the Ordinances.

8. (1) The Librarian shall be appointed by the Executive Council on the recommendations of the Selection Committee constituted for the purpose and he shall be a whole-time salaried officer of the University. Librarian.

(2) The Librarian shall exercise such powers and perform such duties as may be assigned to him by the Executive Council.

9. (1) The Court shall consist of the following members who shall hold office for a period of three years, namely:— Constitution and meetings of a Court.

(a) *Ex officio* Members:

- (i) the Chancellor;
- (ii) the Vice-Chancellor;
- (iii) the Proctor;
- (iv) the Deans of Schools;
- (v) the Dean of Students' Welfare;
- (vi) the Finance Officer;
- (vii) one Senior Warden, by rotation;
- (viii) the Librarian of the University;
- (ix) the President, Alumni Association;

(b) Other Members:

(i) Heads of Departments or Professors who are members of the Academic and Activity Council;

(ii) one representative from each institution recognised by the university, nominated by the Vice-Chancellor on recommendations of the Head of the Institution;

(iii) not more than four persons from amongst eminent sports scientists, sports academicians and sports administrators to be nominated by the Central Government;

(iv) not more than two persons representing sports industry, to be nominated by the Central Government;

(v) not more than ten persons from amongst eminent sports persons and highly recognised coaches to be nominated by the Central Government;

(c) the Registrar - *Ex officio* Member-Secretary.

(2) An annual meeting of the Court shall be held on a date to be fixed by the Executive Council unless some other date has been fixed by the Court in respect of any year.

(3) At an annual meeting of the Court, a report on the working of the University during the previous year, together with a statement of the receipts and expenditure, the balance-sheet as audited, and financial estimates for the next year shall be presented.

(4) A copy of the statement of receipts and expenditure, the balance-sheet and the financial estimates referred to in clause (2) shall be sent to every member of the Court at least seven days before the date of the annual meeting.

(5) Special meetings of the Court may be convened by the Executive Council or the Vice-Chancellor or if there is no Vice-Chancellor, by the Registrar.

(6) Eleven members of the Court shall form a quorum for a meeting of the Court.

Quorum for  
meeting of  
Executive  
Council.

10. Seven members of the Executive Council shall form a quorum for a meeting of the Executive Council.

Constitution,  
powers and  
functions of  
Executive  
Council.

11. (1) The Executive Council shall consist of the following members to be nominated by the Central Government who shall hold office for a period of two years, namely:—

(a) *Ex officio* Members:

(i) the Vice-Chancellor;

(ii) the Proctor;

(iii) the Dean of Students' Welfare;

(iv) the Additional Secretary and Financial Advisor, Ministry of Youth Affairs and Sports;

(v) the Joint Secretary, Ministry of Youth Affairs and Sports;

(vi) the Deans of Schools;

(b) Other Members:

(i) three Senior Professors by rotation;

(ii) four persons from amongst sports scientists, sports administrators, eminent sports persons and distinguished coaches.

(2) The Executive Council shall have the power of management and administration of the revenue and property of the University and the conduct of all administrative affairs of the University not otherwise provided for.

(3) Subject to the provision of this Act, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely:—

(i) to create teaching and other academic posts including Chairs, to determine the number and emoluments of such posts and to define the duties and conditions of service of Professors, Associate Professors; Assistant Professors and other academic staff:

Provided that no action shall be taken by the Executive Council in respect of the number and qualifications of teachers and other academic staff otherwise than after consideration of the recommendations of the Academic and Activity Council;

(ii) to appoint such Professors; Associate Professors, Assistant Professors and other academic staff including Chair, as may be necessary, on the recommendation of



the Selection Committee constituted for the purpose and to fill up temporary vacancies therein;

(iii) to promote interfacial research by making joint appointments of teaching staff in different Schools, Department and Centres;

(iv) to create administrative, ministerial and other necessary posts and to define their duties and conditions of their service and to make appointments thereto in the manner prescribed by the ordinances;

(v) to grant leave of absence to any officer of the University other than the Chancellor and the Vice-Chancellor, and to make necessary arrangements for the discharge of the functions of such officer during his absence;

(vi) to regulate and enforce discipline among employees in accordance with the Statutes and the Ordinances;

(vii) to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University and for that purpose to appoint such agents as it may think fit;

(viii) to fix limits on the total recurring and the total non-recurring expenditure for a year on the recommendation of the Finance Committee;

(ix) to invest any money belonging to the University, including any unapplied income, in such stocks, funds, share or securities, from time to time, as it may think fit or in the purchase of immovable property in India, with the like powers of varying such investment from time to time;

(x) to transfer or accept transfers of any movable or immovable property on behalf of the University;

(xi) to provide buildings, premises, furniture and apparatus and other means needed for carrying on the work of the University;

(xii) to enter into, vary, carry out and cancel contracts on behalf of the University;

(xiii) to entertain, adjudicate upon, and if though fit, to redress any grievances of the employees and students of the University who may, for any reason, feel aggrieved;

(xiv) to appoint examiners and moderators and, if necessary, to remove them, and to fix their fees, emoluments and travelling and other allowances, after consulting the Academic and Activity Council;

(xv) to select a common seal for the University and provide for the use of such seal;

(xvi) to make such special arrangements as may be necessary for the residence of women students;

(xvii) to institute fellowships, scholarships, studentships, medals and prizes;

(xviii) to provide for the appointment of Visiting Professors, Emeritus Professors, Consultants and Scholars and determine the terms and conditions of such appointments;

(xix) to enter into partnership with industry and non-government agencies for the advancement of knowledge and establish a corpus of funds out of the profits of such partnership; and

(xx) to exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or this Statutes.

12. (1) The members of the Academic and Activity Council shall include sports persons who have achieved distinction in Olympics or world championships.

Members of Academic and Activity Council and quorum for meeting.

(2) Nine members of the Academic and Activity Council shall form quorum for the meeting of the Academic and Activity Council.

13. Subject to the provisions of this Act, the Statutes and the Ordinances, the Academic and Activity Council shall, in addition to all other powers vested in it, have the following powers, namely:—

Powers and functions of Academic and Activity Council.

(a) to exercise general supervision over the academic policies of the University and to give directions regarding methods of instruction, co-ordination of teaching among the Colleges, Institutions, Regional Centres and Study Centres and evaluation of research and improvement of academic standards;

(b) to bring about and promote inter-School co-ordination and to establish or appoint such committees or boards as may be deemed necessary for the purpose;

(c) to consider matters of general academic interest either on its own initiative, or on a reference by a School or the Executive Council, and to take appropriate action thereon;

(d) to frame such regulations and rules consistent with the Statutes and the Ordinances regarding the academic functioning of the University, discipline, residence, admissions, award of fellowships and studentships, fees, concessions, corporate life and attendance.

14. (1) The University shall have such Schools of Studies as may be specified in the Statutes.

Schools of Studies and Departments.

(2) Every School shall have a School Board and the members of the first School Board shall be nominated by the Executive Council for a period of three years.

(3) The composition, powers and functions of a School Board shall be prescribed by the Ordinances.

(4) The conduct of the meetings of a School Board and the quorum required for such meetings shall be prescribed by the Ordinances.

(5) (a) Every School shall consist of such Departments as may be assigned to it by the Ordinances:

Provided that the Executive Council may, on the recommendation of the Academic and Activity Council, establish Centers of Studies to which may be assigned such teachers of the University as the Executive Council may consider necessary.

(b) Each Department shall consist of the following members, namely:—

(i) teachers of the Department;

(ii) persons conducting research in the Department;

(iii) Dean of the School;

(iv) Honorary Professors, if any, attached to the Department; and

(v) such other persons as may be members of the Department in accordance with the provisions of the Ordinances.

15. (1) Each Department shall have a Board of Sports Studies.

Board of Sports Studies.

(2) The term of office of the Board of Sports Studies and of its members shall be prescribed by the Ordinances.

(3) Subject to the overall control and supervision of the Academic and Activity Council, the functions of a Board of Sports Studies shall be to approve subjects for research for various degrees and other requirements of research degrees and to recommend to the concerned School Board in the manner prescribed by the Ordinances—

(a) courses of studies and appointment of examiners for courses, but excluding research degrees;

(b) appointment of supervisors for research; and

(c) measures for the improvement of the standard of teaching and research:

Provided that the above functions of a Board of Sports Studies shall, during the period of three years immediately after the commencement of this Act, be performed by the Department.

16. (1) The Finance Committee shall consist of the following members, namely:—

Finance  
Committee.

(i) the Vice-Chancellor;

(ii) one person to be nominated by the Court;

(iii) three persons to be nominated by the Executive Council, out of whom at least one shall be a member of the Executive Council; and

(iv) three persons to be nominated by the Central Government.

(2) Five members of the Finance Committee shall form a quorum for a meeting of the Finance Committee.

(3) All the members of the Finance Committee, other than *ex officio* members, shall hold office for a term of three years.

(4) A member of the Finance Committee shall have the right to record a minute of dissent if he does not agree with any decision of the Finance Committee.

(5) The Finance Committee shall meet at least thrice every year to examine the accounts and to scrutinise proposals for expenditure.

(6) All proposals relating to creation of posts, and those items which have not been included in the budget, shall be examined by the Finance Committee before they are considered by the Executive Council.

(7) The annual accounts and the financial estimates of the University prepared by the Finance Officer shall be laid before the Finance Committee for consideration and comments and thereafter submitted to the Executive Council for approval.

(8) The Finance Committee shall recommend limits for the total recurring expenditure and the total non-recurring expenditure for the year, based on the income and resources of the University (which, in the case of productive works, may include the proceeds of loans).

17. (1) There shall be Selection Committees for making recommendations to the Executive Council for appointment to the post of Professor, Associate Professor, Assistant Professor, Registrar, Finance Officer, Controller of Examinations, Librarian and Principals of Colleges, Institutions, Regional Centres and Study Centres established or maintained by the University.

Selection  
Committees.

(2) The Selection Committee for appointment to the posts specified in column 1 of the Table below shall consist of the Vice-Chancellor, a nominee of the Central Government and the persons specified in the corresponding entry in column 2 of the said Table:

TABLE

1	2
Professor.	<p>(i) The Dean of the School.</p> <p>(ii) The Head of the Department, if he is a Professor.</p> <p>(iii) Three persons not in the service of the University, nominated by the Executive Council, out of a panel of names recommended by the Academic and Activity Council for their special knowledge of, or interest in, the subject with which the Professor will be concerned.</p>

1	2
Associate Professor/ Assistant Professor.	(i) The head of the Department. (ii) One Professor nominated by the Vice-Chancellor. (iii) Two persons not in the service of the University, nominated by the Executive Council, out of a panel of names recommended by the Academic and Activity Council for their special knowledge of, or interest in, the subject with which the Associate Professor or Assistant Professor will be concerned.
Registrar/ Finance Officer/ Controller of Examination.	(i) Two members of the Executive Council nominated by it. (ii) One person not in the service of the University nominated by the Executive Council.
Librarian.	(i) One person not in the service of the University who has special knowledge of the subject of the Library Science or Library Administration nominated by the Executive Council. (ii) One person not in the service of the University nominated by the Executive Council.
Principal of college or institution maintained by the University.	Three persons not in the service of the University of whom two shall be nominated by the Executive Council and one by the Academic and Activity Council for their special knowledge of, or interest in, a subject in which instruction is being provided by the College or Institution.

*Note 1.*—Where the appointment is being made for an inter-disciplinary project, the head of the project shall be deemed to be the Head of the Department concerned.

*Note 2.*—The Professor to be nominated by the Vice-Chancellor shall be a Professor concerned with the specialty for which the selection is being made and the Vice-Chancellor shall consult the Head of the Department and the Dean of the School before nominating the Professor.

(3) The Vice-Chancellor shall convene and preside at the meeting of the Selection Committee:

Provided that the meeting of the Selection Committee shall be fixed after prior consultation with, and subject to the convenience of the Central Government's nominee and the experts nominated by the Executive Council:

Provided further that the proceedings of the Selection Committee shall not be valid unless,—

(a) where the number of the Central Government's nominee and the persons nominated by the Executive Council is four in all, at least three of them attend the meeting; and

(b) where the number of the Central Government's nominee and the persons nominated by the Executive Council is three in all, at least two of them attend the meeting.

(4) The procedure to be followed by the Selection Committee shall be laid down in the Ordinances.

(5) If the Executive Council is unable to accept the recommendations made by the Selection Committee, it shall record its reasons and submit the case to the Central Government for final orders.

(6) Appointments to temporary posts shall be made in the manner indicated below:—

(i) If the temporary vacancy is for duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing clauses:

Provided that if the Vice-Chancellor is satisfied that in the interests of work it is necessary to fill the vacancy, the appointment may be made on a purely temporary basis on the advice of a local Selection Committee referred to in sub-clause (ii) for a period not exceeding six months.

(ii) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of the Dean of the School concerned, the Head of the Department and a nominee of the Vice-Chancellor:

Provided that if the same person holds the offices of the Dean and the Head of the Department, the Selection Committee may contain two nominees of the Vice-Chancellor:

Provided further that in the case of sudden casual vacancies of teaching posts caused by death or any other reason, the Dean may, in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment.

(iii) No teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under the Statutes, be continued in service on such temporary employment, unless he is subsequently selected by a local Selection Committee or a regular Selection Committee, for a temporary or permanent appointment, as the case may be.

18. (1) Notwithstanding anything contained in Statute 16, the Executive Council may invite a person of high academic distinction and professional attainments to accept a post of Professor or Associate Professor or any other equivalent academic post in the University on such terms and conditions as it deems fit and on the person agreeing to do so, appoint him to the post:

Special mode of appointment.

Provided that the Executive Council may also create supernumerary posts for a specified period for appointment of such persons:

Provided further that the number of supernumerary posts so created should not exceed five per cent. of the total posts in the University.

(2) The Executive Council may appoint a teacher or any other academic staff working in any other University or organisation for undertaking a joint project in accordance with the manner laid down in the Ordinances.

19. The Executive Council may appoint a person selected in accordance with the procedure laid down in Statute 16 for a fixed tenure on such terms and conditions as it deems fit.

Appointment for fixed tenure.

20. (1) An authority of the University may appoint as many standing or special committees as it may deem fit, and may appoint to such committees persons who are not members of such authority.

Committees.

(2) A committee appointed under clause (1) may deal with any subject delegated to it subject to subsequent confirmation by the authority appointing it.

21. (1) All the teachers and other academic staff of the University shall, in the absence of any agreement to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

Terms and conditions of service and code of conduct of teachers, etc.

(2) The emoluments of members of the academic staff shall be such as may be prescribed by the Ordinances.

(3) Every teacher and member of the academic staff of the University shall be appointed on a written contract, the form of which shall be prescribed by the Ordinances.

(4) A copy of every contract referred to in clause (3) shall be deposited with the Registrar.

Terms and conditions of service and code of conduct of other employees.

22. (1) All the employees of the University, other than the teachers and other academic staff shall, in the absence of any contract to the contrary, be governed by the terms and conditions of service and code of conduct as are specified in the Statutes, the Ordinances and the Regulations.

(2) The manner of appointment and emoluments of employees, other than the teachers and other academic staff, shall be such as may be prescribed by the Ordinances.

Seniority list.

23. (1) Whenever, in accordance with the Statutes, any person is to hold an office or be a member of an authority of the University by rotation according to seniority, such seniority shall be determined according to the length of continuous service of such person in his grade and in accordance with such other principles as the Executive Council may, from time to time, prescribe.

(2) It shall be the duty of the Registrar to prepare and maintain in respect of each class of persons to whom the provisions of these Statutes apply, a complete and up-to-date seniority list in accordance with the provisions of clause (1).

(3) If two or more persons have equal length of continuous service in a particular grade or the relative seniority of any person or persons is otherwise in doubt, the Registrar may, on his own motion and shall, at the request of any such person, submit the matter to the Executive Council whose decision thereon shall be final.

Removal of employees of University.

24. (1) Where there is an allegation of misconduct against a teacher, a member of the academic staff or other employee of the University, the Vice-Chancellor, in the case of the teacher or a member of the academic staff, and the authority competent to appoint (hereinafter referred to as the appointing authority) in the case of other employee may, by order in writing, place such teacher, member of the academic staff or other employee, as the case may be, under suspension and shall forthwith report to the Executive Council the circumstances in which the order was made:

Provided that the Executive Council may, if it is of the opinion, that the circumstances of the case do not warrant the suspension of the teacher or a member of the academic staff, revoke such order.

(2) Notwithstanding anything contained in the terms of the contract of appointment or of any other terms and condition of service of the employees, the Executive Council in respect of teachers and other academic staff, and the appointing authority in respect of other employees, shall have the power to remove a teacher or a member of the academic staff or other employee, as the case may be, on grounds of misconduct.

(3) Save as aforesaid, the Executive Council, or as the case may be, the appointing authority, shall not be entitled to remove any teacher, member of the academic staff or other employee except for a good cause and after giving three months' notice or on payment of three months' salary in lieu thereof.

(4) No teacher, member of the academic staff or other employee shall be removed under clause (2) or clause (3) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

(5) The removal of a teacher, member of the academic staff or other employee shall take effect from the date on which the order of removal is made:

Provided that where the teacher, member of the academic staff or other employee is under suspension at the time of his removal, such removal shall take effect from the date on which he was placed under suspension.



(6) Notwithstanding anything contained in the foregoing provisions of the Statute, a teacher, member of the academic staff or other employee may resign—

(a) if he is a permanent employee, only after giving three months' notice in writing to the Executive Council or the appointing authority, as the case may be, or by paying three months' salary in lieu thereof;

(b) if he is not a permanent employee, only after given one months' notice in writing to the Executive Council or, as the case may be, the appointing authority or by paying one month's salary in lieu thereof:

Provided that such resignation shall take effect only on the date on which the resignation is accepted by the Executive Council or the appointing authority, as the case may be.

25. (1) The Executive Council may, on the recommendation of the Academic and Activity Council and by a resolution passed by a majority of not less than two-thirds of the members present and voting, make proposals to the Central Government for the conferment of honorary degrees:

Honorary degrees.

Provided that in case of emergency, the Executive Council may, on its own motion, make such proposals.

(2) The Executive Council may, by a resolution passed by a majority of not less than two-thirds of the members present and voting, withdraw, with the previous sanction of the Central Government, any honorary degree conferred by the University.

26. The Executive Council may, by a resolution passed by a majority of not less than two-thirds of the members present and voting, withdraw a degree or academic distinction conferred on, or any certificate or diploma granted to, any person by the University for good and sufficient cause:

Withdrawal of degrees, etc.

Provided that no such resolution shall be passed until a notice in writing has been given to that person calling upon him to show cause within such time as may be specified in the notice as to why such a resolution should not be passed and until his objections, if any, and any evidence he may produce in support of them, have been considered by the Executive Council.

27. (1) All powers relating to the maintenance of discipline and disciplinary action in relation to the students of the University shall vest in Vice-Chancellor.

Maintenance of discipline amongst students of University.

(2) There shall be Proctor of the University to assist the Vice-Chancellor in the exercise of the powers referred to in clause (1), who shall be appointed by the Executive Council from amongst the Professors and Associate Professors in the manner prescribed by the Ordinances.

(3) The Vice-Chancellor may delegate all or any of the powers referred to in clause (1), as he deems proper, to the Proctor and to such other officers as he may specify in this behalf.

(4) Without prejudice to the generality of his powers relating to the maintenance of discipline and taking such action, as may seem to him appropriate for the maintenance of discipline, the Vice-Chancellor may, in exercise of such powers, by order, direct that any student or students be expelled or rusticated, for a specified period, or be not admitted to a course or courses of study in a College, Institution or Regional Centre or a Department or a School of the University for a stated period, or be punished with fine for an amount to be specified in the order, or be debarred from taking an examination or examinations conducted by the University, College, Institution or Regional Centre or Department or a School for one or more years, or that the results of the student or students concerned in the examination or examinations in which he or they have appeared be withheld or cancelled.

(5) The Principals of Colleges, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University shall have the authority to exercise all such disciplinary powers over the students in their respective Colleges, Institutions, Schools and teaching Departments in the University, as may be necessary for the proper conduct of such Colleges, Institution, Schools and teaching Departments.

(6) Without prejudice to the powers of the Vice-Chancellor and the Principals and other persons specified in clause (5), detailed rules of discipline and proper conduct shall be made by the University and the Principals of Colleges, Institutions, Deans of Schools of Studies and Heads of teaching Departments in the University may also make such supplementary rules as they deem necessary for the purposes stated therein.

(7) At the time of admission, every student shall be required to sign a declaration to the effect that he submits himself to the disciplinary jurisdiction of the Vice-Chancellor and other authorities of the University.

Convocations. 28. Convocations of the University for the conferring of degrees or for other purposes shall be held in such manner as may be prescribed by the Ordinances.

Acting Chairman of meetings. 29. Where no provision is made for Chairman to preside over a meeting of any authority of the University or any Committee of such authority or when the Chairman so provided for is absent, the members present shall elect one from among themselves to preside at such meeting.

Resignation. 30. Any member, other than an *ex officio* member of the Court, the Executive Council, the Academic and Activity Council or any other authority of the University or any Committee of such authority may resign by letter addressed to the Registrar and the resignation shall take effect as soon as such letter is received by the Registrar.

Disqualification. 31. (1) A person shall be disqualified for being chosen as, and for being, a member of any of the authorities, or for being appointed as, and for being, an officer, of the University if—

(i) he is of unsound mind; or

(ii) he is an undischarged insolvent; or

(iii) he has been convicted by a court of law of an offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months.

(2) If any question arises as to whether a person is or had been subjected to any of the disqualifications mentioned in clause (i), the question shall be referred to the Central Government and its decision shall be final and no suit or other proceeding shall lie in any civil court against such decision.

Residence conditions for membership and office. 32. Notwithstanding anything contained in the Statutes, a person who is not ordinarily resident in India shall not be eligible to be an officer of the University or a member of any authority of the University.

Membership of authorities by virtue of membership of other bodies. 33. Notwithstanding anything contained in the Statutes, a person who holds any post in the University or is a member of any authority or body of the University in his capacity as a member of a particular authority or body or as the holder of a particular appointment shall hold such office or membership only for so long as he continues to be a member of that particular authority or body or the holder of that particular appointment, as the case may be.

Alumni Association. 34. (1) There shall be an Alumni Association for the University.  
(2) The subscription for membership of the Alumni Association shall be prescribed by the Ordinances.

(3) No member of the Alumni Association shall be entitled to vote or stand for election unless he has been a member of the Association for at least one year prior to the date of election and is a degree holder of the University of at least five years standing:

Provided that the condition relating to the completion of one year's membership shall not apply in the case of the first election.

Students Council. 35. (1) There shall be constituted in the University, a Students' Council for every academic year, consisting of—

(i) the Dean of Students' Welfare who shall be the Chairman of the Students' Council;

(ii) twenty students to be nominated by the Academic and Activity Council on the basis of merit in studies, sports and extra-curricular activities; and

(iii) twenty students to be elected by the students as their representatives:

Provided that any student of the University shall have the right to bring up any matter concerning the University before the Students' Council, if so permitted by the Chairman, and he shall have the right to participate in the discussions at any meeting when the matter is taken up for consideration.

(2) The functions of the Students' Council shall be to make suggestions to the appropriate authorities of the University in regard to the programmes of studies, students' welfare and other matters of importance, in regard to the working of the University in general and such suggestions shall be made on the basis of consensus of opinion.

(3) The Students' Council shall meet at least twice in every academic year and the first meeting of the Council be held in the beginning of the academic session.

36. (1) The first Ordinances made under sub-section (2) of section 26 may be amended, repealed or added to at any time by the Executive Council in the manner specified in the following clauses.

Ordinances  
how to be  
made.

(2) No Ordinances in respect of the matters enumerated in sub-section (1) of section 26 of this Act shall be made by the Executive Council unless a draft of such Ordinances has been proposed by the Academic and Activity Council.

(3) The Executive Council shall not have power to amend any draft of any Ordinances proposed by the Academic and Activity Council under clause (2), but may reject the proposal or return the draft to the Academic and Activity Council for re-consideration, either in whole or in part, together with any amendment which the Executive Council may suggest.

(4) Where the Executive Council has rejected or returned the draft of an Ordinances proposed by the Academic and Activity Council, the Academic and Activity Council may consider the question a fresh and in case the original draft is reaffirmed by a majority of not less than two-thirds of the members present and voting and more than half of the total number of members of the Academic and Activity Council, the draft may be sent back to the Executive Council which shall either adopt it or refer it to the Central Government whose decision shall be final.

(5) Every Ordinance made by the Executive Council shall come into effect immediately.

(6) Every Ordinance made by the Executive Council shall be submitted to the Central Government within two weeks from the date of its adoption.

(7) The Central Government shall have the power to direct the University to suspend the operation of any Ordinance.

(8) The Central Government shall inform the Executive Council about its objection to the Ordinances referred to in clause (7) and may, after receiving the comments of the University, either withdraw the order suspending the Ordinances or disallow the Ordinances, and its decision shall be final.

37. (1) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances for the following matters, namely:—

Regulations.

(i) laying down the procedure to be observed at their meeting and the number of members required to form a quorum;

(ii) providing for all matters which are required by this Act, the Statutes or the Ordinances, to be prescribed by Regulations; and

(iii) providing for all other matters solely concerning such authorities or committees appointed by them and not provided for by this Act, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meeting and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment in such manner as it may specify of any Regulation made under the Statutes or the annulment of any such Regulation.

Delegation of  
powers.

38. Subject to the provisions of this Act and the Statutes, any officer or authority of the University may delegate his or its powers to any other officer or authority or person under his or its respective control and subject to the condition that overall responsibility for the exercise of the powers so delegated shall continue to vest in the officer or authority delegating such powers.

## STATEMENT OF OBJECTS AND REASONS

The National Sports University will be the first full-fledged sports university in India of international standard. The Lakshmibai National Institute of Physical Education, Gwalior, a deemed university, is restricted to offering Bachelor of Physical Education and Master of Physical Education courses and the Netaji Subhas National Institute of Sports focuses on training elite athletes and coaches only. Thus, a void exists in the sports environment of the country in various areas, such as, sports science, sports technology, sports management, high performance training, etc. Therefore, it has been decided to establish the National Sports University (University) which is expected to fill this void with its exclusive focus on creation of high standard infrastructure for the development of sports sciences and training of athletes apart from providing Bachelors Degree, Master's Degrees and Research and Training in various areas related to sports.

2. Consistent with international practices followed by best sports universities in the world, the focus of the University will be on multi-disciplinary studies and accordingly, have functionally related Schools with stress on applicability based on the latest researches in sports sciences, sports medicine and sports technology. The University will address issues relating to various disciplines of great importance at international levels, including adventure and disability sports. The University is also empowered to establish outlying campuses throughout the country and also outside India. Apart from academic programmes and research, the University and its outlying campuses will also impart training to elite athletes, sports officials, referees and umpires and evolve as centres of excellence in various disciplines of sports. To make the University a world standard university, a memorandum of understanding have been signed by the Government of India with two Australian Universities, namely, the University of Canberra and Victoria University, for the development of curriculum, research facilities, laboratories, etc.

3. The notes on clauses explain in detail the various provisions of the Bill.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 31st July, 2017.*

VIJAY GOEL.

*Notes on clauses*

*Clause 2* of the Bill defines the various expressions used in the Bill.

*Clause 3* of the Bill provides for the establishment of the National Sports University with its headquarters in the State of Manipur.

*Clause 4* of the Bill provides for the objects of the University which include, *inter alia*, (a) to evolve as an institute of advanced study in the field of physical education and sports sciences; (b) to provide for research and development and dissemination of knowledge in physical education and sports sciences; (c) to provide professional and academic leadership to other institutions in the field of physical education and sports sciences; (d) to serve as a Centre of Excellence for the elite and other talented sportspersons of all sports and games and innovation in physical education and sports sciences and to carry out, endorse and propagate research, etc.

*Clause 5* of the Bill provides for and elaborates the powers and functions of the University which include, *inter alia*, (a) to design, develop and conduct appropriate academic and training programmes in physical education and sports sciences; (b) to grant, subject to such conditions as the University may determine, diplomas or certificates to, and confer degrees or other academic distinctions; (c) to open Regional Centres in other parts of the country and to establish outlying campuses within India or outside India; (d) to conduct innovative experiments and promote new methods and technologies in the fields of physical education, sports sciences, sports medicine, sports technology, sports management and other related fields; (e) to act as a technical advisory body to Government of India and other National Organisations, State Governments and National Sports Federations on all matters related to sports, etc.

*Clause 6* of the Bill provides that the University shall be open to all castes, creed, race or class.

*Clause 7* of the Bill empowers the Central Government to review the work and progress of the University including outlying campuses, Colleges, Institutions, Regional Centres and Study Centres maintained by it.

*Clause 8* of the Bill specifies the officers of the University namely, the Chancellor, the Vice-Chancellor, the Deans of Schools, the Registrar, the Finance Officer, the Controller of Examinations, the Librarian and such other officers as may be declared by the Statutes.

*Clause 9* of the Bill provides for the appointment of the Chancellor who shall be the head of the University.

*Clause 10* of the Bill provides for the appointment of the Vice-Chancellor who shall be the Principal Executive and Academic Officer of the University.

*Clause 11* of the Bill provides for the appointment of the Deans of Schools.

*Clause 12* of the Bill provides for the appointment of the Registrar.

*Clause 13* of the Bill provides for the appointment of the Finance Officer.

*Clause 14* of the Bill provides for the appointment of the Controller of Examinations.

*Clause 15* of the Bill provides for the appointment of the Librarian.

*Clause 16* of the Bill provides for the appointment of other Officers of the University.

*Clause 17* of the Bill specifies the authorities of the University namely, the Court, the Executive Council, the Academic and Activity Council, the Board of Sports Studies, the Finance Committee and such other authorities as may be declared by the Statutes.

*Clause 18* of the Bill provides for the Court and its powers which, includes, *inter alia*, review of broad policies and programmes of the University and to suggest measures of improvement.



*Clause 19* of the Bill provides for the Executive Council, who shall be the Principal Executive Body of the University, and its powers.

*Clause 20* of the Bill provides for the Academic and Activity Council which shall be the Principal Academic Body of the University and its constitution.

*Clause 21* of the Bill provides that the constitution, powers and functions of the Board of Sports Studies shall be prescribed by the Statutes.

*Clause 22* of the Bill provides that the constitution, powers and functions of the Finance Committee shall be prescribed by the Statutes.

*Clause 23* of the Bill provides that the constitution, powers and functions of other authorities of the University shall be prescribed by the Statutes.

*Clause 24* of the Bill provides for the matters in respect of which the Statutes may be made under the Bill.

*Clause 25* of the Bill provides for the manner in which the Statutes may be made under the Bill.

*Clause 26* of the Bill provides for the matters in respect of which the Ordinances may be made under the Bill.

*Clause 27* of the Bill empowers the authorities of the University to make Regulations, consistent with the Bill, the Statutes and the Ordinances.

*Clause 28* of the Bill provides that the Annual Report of the University shall be prepared under the directions of the Executive Council and shall be submitted to the Court which, in turn, shall submit the same to the Central Government with its comments, if any.

*Clause 29* of the Bill provides that Annual Accounts of the University shall be prepared under the directions of the Executive Council every year and be audited by the Comptroller and Auditor-General (CAG) of India and the observations of the Central Government thereon shall be brought to the notice of the Court and on resubmission to the Central Government, may be laid before both Houses of Parliament.

*Clause 30* of the Bill provides that there shall be a University Fund for contributions, grants, loans, gifts, donations, etc.

*Clause 31* of the Bill provides that the University shall furnish returns and information in respect of its property to the Central Government.

*Clause 32* of the Bill provides for the conditions of the service of the employees which, *inter alia*, include that every employee shall be employed under a written contract and disputes arising out of the contract, shall be referred to a Tribunal of Arbitration.

*Clause 33* of the Bill provides for procedure of appeal and arbitration in disciplinary cases against students.

*Clause 34* of the Bill provides that every employee or student of the University or of a College or an Institution or a Regional Centre or a Study Centre of the University shall have the right to appeal to the Executive Council.

*Clause 35* of the Bill provides that the University shall constitute provident and pension funds for its employees.

*Clause 36* of the Bill provides for referral of disputes arising out of elections of the University to the Central Government for a final decision.

*Clause 37* of the Bill provides for filling of casual vacancies of the University.

*Clause 38* of the Bill provides that the proceedings of authorities or bodies shall not be invalidated by the vacancies among its members.

*Clause 39* of the Bill provides for protection of officers who have taken action in good faith in pursuance of the provisions of the Act, the statutes or the ordinances.

*Clause 40* of the Bill provides that anything certified by the Registrar shall be received as *prima facie* evidence such as receipts, applications, etc.

*Clause 41* of the Bill provides for power of the Central Government to remove difficulties, by order published in the Official Gazette, if any difficulty arises in giving effect to the provisions of the Bill.

*Clause 42* of the Bill provides that every Statute, Ordinance or Regulation made under the Bill shall be published in the Official Gazette.

*Clause 43* of the Bill provides for transitional provisions empowering the Central Government to appoint the first Vice-Chancellor, the first Registrar, the first Executive Council, the first Academic and Activity Council.

## FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for the establishment of a University by the name of "National Sports University" with its headquarters in the State of Manipur.

2. The University is proposed to be established within a period of two financial years with effect from 2017-2018 to 2018-2019. The total expenditure towards establishment of the University is estimated to be 524 crore rupees, of which the cost for the said two financial years is expected to be 184 crore rupees and 340 crore rupees, respectively, which will include expenditure for the establishment of outlying campuses. The land for the establishment of the University has been granted by the Government of Manipur free of cost. Hence, the cost of land is not factored in the overall expenditure.

3. Out of the total expenditure of 524 crore rupees, the non-recurring expenditure is estimated to be 442 crore rupees and the recurring expenditure is estimated to be 82 crore rupees.

4. The Bill does not involve any other expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 25 of the Bill provides that the first Statutes are those set-out in the Schedule to this Bill. Sub-clause (4) of clause 25 of the Bill provides that the Central Government may make new or additional Statutes or amend or repeal the first Statutes during the period of three years immediately after the commencement of the Bill. It further provides that on the expiry of the period of three years, the Central Government may make, within one year from the date of such expiry, such detailed Statutes as it may consider necessary. Clause 24 of the Bill provides for the matters in respect of which the Statutes may be made.

2. Sub-clause (1) of clause 26 of the Bill provides for the matters in respect of which the Ordinances may be made which include, *inter alia*, admission of students, courses of study, medium of instructions, award of degrees, diplomas, etc., fees charged for the courses, conditions for award of fellowships, scholarships, etc., conduct of examinations, conditions of residence of students, special arrangements, if any, establishment of centres of studies, collaboration with other universities and institutions, creation of any other body considered necessary, institution of fellowships, setting-up machinery for redressal of grievances and any other matter that may be provided for by the Ordinances. Sub-clause (2) of clause 26 of the Bill provides that the first Ordinances shall be made by the Vice-Chancellor with the previous approval of the Executive Council and the Ordinances so made may also be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes.

3. Clause 27 of the Bill empowers the University to make Regulations consistent with the Bill, the Statutes and the Ordinances for the conduct of its own business and that of the Committees, if any, appointed by them and not provided for by the Bill, the Statutes or the Ordinances, in the manner prescribed by the Statutes.

4. The matters in respect of which the Statutes, Ordinances and Regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

## BILL NO. 163 OF 2017

*A Bill to consolidate and amend the laws relating to wages and bonus and matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

## CHAPTER I

## PRELIMINARY

1. (1) This Act may be called the Code on Wages, 2017.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Code and any reference in any such provision to the commencement of this Code shall be construed as a reference to the coming into force of that provision.

Short title,  
extent and  
commencement.

## Definitions.

**2.** In this Code, unless the context otherwise requires,—

- (a) “accounting year” means the year commencing on the 1st day of April;
- (b) “Advisory Board” means the Central Advisory Board or, as the case may be, the State Advisory Board, constituted under section 42;
- (c) “agricultural income-tax law” means any law for the time being in force relating to the levy of tax on agricultural income;
- (d) “appropriate Government” means,—
- (i) in relation to, an establishment carried on by or under the authority of the Central Government or the establishment of railways, mines, oil-field, major ports, air transport service, telecommunication, banking and insurance company or a corporation or other authority established by a Central Act or a central public sector undertaking or subsidiary companies set-up by central public sector undertakings or autonomous bodies owned or controlled by the Central Government, including establishment of contractors for the purposes of such establishment, corporation or other authority, central public sector undertakings, subsidiary companies or autonomous bodies, as the case may be, the Central Government;
- (ii) in relation to any other establishment, the State Government;
- (e) “company” means a company defined in clause (20) of section 2 of the Companies Act, 2013; 18 of 2013.
- (f) “contractor”, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;
- (g) “co-operative society” means a society registered or deemed to be registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State relating to co-operative societies; 2 of 1912.
- (h) “corporation” means anybody corporate established by or under any Central Act, or State Act but does not include a company or a co-operative society;
- (i) “direct tax” means—
- (I) any tax chargeable under the—
- (A) Income-tax Act, 1961; 43 of 1961.
- (B) Companies (Profits) Surtax Act, 1964; 7 of 1964.
- (C) agricultural income-tax law; and
- (II) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification, to be a direct tax for the purposes of this Code;
- (j) “employee” means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union; 52 of 1961.
- (k) “employer” means a person who employs one or more employees in his establishment and where the establishment is carried on by any department of the Central Government or the State Government, the authority specified, by the head of



such department, in this behalf or where no authority, is so specified the head of the department and in relation to an establishment carried on by a local authority, the chief executive of that authority, and includes,—

63 of 1948.

(i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;

(ii) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director; and

(iii) contractor;

(l) “establishment” means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishment;

(m) “Facilitator” means a person appointed by the appropriate Government under sub-section (1) of section 51;

63 of 1948.

(n) “factory” means the factory as defined in clause (m) of section 2 of the Factories Act, 1948;

(o) “Government establishment” means any office or department of the Government or a local authority;

43 of 1961.

(p) “Income-tax Act” means the Income-tax Act, 1961;

(q) “industrial dispute” means,—

(i) any dispute or difference between employers and employers, or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person; and

(ii) any dispute or difference between an individual worker and an employer connected with, or arising out of, discharge, dismissal, retrenchment or termination of such worker;

(r) “minimum wage” means the wage fixed under section 6;

(s) “notification” means a notification published in the Gazette of India or the Official Gazette of a State, as the case may be, and the expression “notify” with its grammatical variations and cognate expressions shall be construed accordingly;

(t) “prescribed” means prescribed by rules made by the appropriate Government;

(u) “same work or work of a similar nature” means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions by employees and the difference if any, between the skill, effort and responsibility required for employees of any gender, are not of practical importance in relation to the terms and conditions of employment;

(v) “State” includes a Union territory;

14 of 1947.

(w) “Tribunal” shall have the same meaning assigned to it in clause (r) of section 2 of the Industrial Disputes Act, 1947;

(x) “wages” means all remuneration, whether by way of salary, allowances or otherwise, expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes,—

(i) any remuneration payable under any award or settlement between the parties or order of a court;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any period of leave;

(iii) any additional remuneration payable under the terms of employment, whether called a bonus or by any other name;

(iv) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(vi) any house rent allowance,

but does not include—

(A) any bonus payable under this Code, which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court or Tribunal;

(B) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the appropriate Government;

(C) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(D) any travelling allowance or the value of any travelling concession;

(E) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(F) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (iv):

Provided that, for the purposes of Chapter IV, “wages” means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance, that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living, but does not include,—

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house-accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any bonus including incentive, production and attendance bonus;

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex gratia* payment made to him;

(vii) any commission payable to the employee:

Provided further that for calculating the wages under the first proviso for the purposes of payment of bonus, if the payments made by the employer to the employee under clauses (i) to (vii) exceeds one-half of the all remuneration

specified under the said proviso, the amount which exceeds such one-half shall be deemed as remuneration and shall be accordingly added in all remuneration under that proviso.

*Explanation.*—Where an employee is given in lieu of the whole or part of the wages payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purposes of the first proviso, be deemed to form part of the wages of such employee;

52 of 1961. (y) “worker” means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied, and includes working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, but does not include any such person—

45 of 1950. (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the  
46 of 1950. Navy Act, 1957; or

62 of 1957. (ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a supervisory or managerial or administrative capacity.

3. (1) There shall be no discrimination among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of similar nature done by any employee.

Prohibition of discrimination on ground of gender.

(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of wages of any employee.

4. Where there is any dispute as to whether a work is of same or similar nature for the purpose of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.

Determination of disputes with regard to same or similar nature of work.

## CHAPTER II

### MINIMUM WAGES

5. No employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government for the area, establishment or work as may be specified in the notification.

Payment of minimum rate of wages.

6. (1) Subject to the provisions of section 9, the appropriate Government shall fix the minimum rate of wages payable to employees.

Fixation of minimum wages.

(2) For the purposes of sub-section (1), the appropriate Government shall fix—

(a) a minimum rate of wages for time work; or

(b) a minimum rate of wages for piece work; or

(c) a minimum rate of wages to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis.

(3) The minimum rate of wages on time work basis may be fixed in accordance with any one or more of the following wage periods, namely:—

(i) by the hour, or

(ii) by the day, or

(iii) by the month.

(4) Where the rates of wages are fixed by the hour or by the day or by the month, the manner of calculating the wages shall be such, as may be prescribed.

(5) The appropriate Government may, by notification, fix factors by which the minimum wages so fixed be multiplied for different types of work.

(6) For the purpose of fixation of factors referred to in sub-section (5), the appropriate Government shall take into account the skill required, the arduousness of the work assigned to the worker, geographical location of the place of work and other factors which the appropriate Government considers necessary.

Components  
of minimum  
wages.

**7. (1)** Any minimum rate of wages fixed or revised by the appropriate Government, in respect of employment, under section 8 may consist of—

(i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as “cost of living allowance”); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification, appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time.

Procedure for  
fixing and  
revising  
minimum  
wages.

**8. (1)** In fixing minimum rates of wages in respect of any employment for the first time under this Code or in revising minimum rates of wages so fixed, the appropriate Government shall either—

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or

(b) by notification publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

(2) Every committee and sub-committee appointed by the appropriate Government under clause (a) of sub-section (1) shall consist of persons—

(a) representing employers;

(b) representing employees which shall be equal in number of the members specified in clause (a); and

(c) independent persons, not exceeding one-third of the total members of the committee or sub-committee, as the case may be.

(3) After considering the recommendation of the committee or sub-committee appointed under clause (a) of sub-section (1) or, as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall also consult concerned Advisory Board constituted under section 42.

(4) The appropriate Government shall review or revise minimum rates of wages at an interval of five years.

**9. (1)** The Central Government may, by notification, fix the national minimum wage:—

Power of Central Government to fix national minimum wage.

Provided that different national minimum wage may be fixed for different States or different geographical areas.

(2) The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the national minimum wage and if the minimum rates of wages fixed by the appropriate Government earlier is more than the national minimum wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

(3) The Central Government, before fixing the national minimum wage under sub-section (1), may obtain the advice of the Central Advisory Board constituted under sub-section (1) of section 42.

**10.** If an employee whose minimum rate of wages has been fixed under this Code by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day:

Wages of employee who works for less than normal working day.

Provided that he shall not be entitled to receive wages for a full normal working day,—

(i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and

(ii) in such other cases and circumstances, as may be prescribed.

**11.** Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

Wages for two or more classes of work.

**12.** Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the minimum time rate.

Minimum time rate wages for piece work.

**13. (1)** Where the minimum rates of wages have been fixed under this Code, the appropriate Government may—

Fixing hours of work for normal working day.

(a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;

(c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

(2) The provisions of sub-section (1) shall, in relation to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely:—

(a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented;

(b) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

(c) employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over; and

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty normally include periods of in action during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

Wages for overtime work.

**14.** Where an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

### CHAPTER III

#### PAYMENT OF WAGES

Mode of payment of wages.

**15.** All wages shall be paid in current coin or currency notes or by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee:

Provided that the appropriate Government may, by notification, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or through digital or electronic mode or by crediting the wages in his bank account.

Fixation of wage period.

**16.** The employer shall fix the wage period for employees either as daily or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month:

Provided that different wage periods may be fixed for different establishments.

Time limit for payment of wages.

**17. (1)** The employer shall pay or cause to be paid wages to the employees, engaged on—

(i) daily basis, at the end of the shift;

(ii) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;

(iii) fortnightly basis, before the end of the second day after the end of the fortnight;

(iv) monthly basis, before the expiry of the seventh day of the succeeding month.

(2) Where an employee has been—

(i) removed or dismissed from service; or

(ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment,

the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.



(4) Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

**18.** (1) Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorised under this Code.

Deductions which may be made from wages.

*Explanation.*—For the purposes of this sub-section,—

(a) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;

(b) any loss of wages to an employee, for a good and sufficient cause, resulting from—

(i) the withholding of increment or promotion, including the stoppage of an increment; or

(ii) the reduction to a lower post or time-scale; or

(iii) the suspension,

shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

(2) Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be only for the following purposes, namely:—

(a) fines imposed on him;

(b) deductions for his absence from duty;

(c) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(d) deductions for house-accommodation supplied by the employer or by the appropriate Government or any housing board set-up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house-accommodation which may be specified in this behalf by the appropriate Government by notification;

(e) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise and such deduction shall not exceed an amount equivalent to the value of such amenities and services.

*Explanation.*—For the purposes of this clause, the expression “services” does not include the supply of tools and raw materials required for the purposes of employment;

(f) deductions for recovery of—

(i) advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;

(ii) loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;

(g) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;

(h) deductions of income-tax or any other tax levied by the Central Government or the State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;

(i) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;

(j) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;

(k) deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926;

16 of 1926.

(l) deductions for recovery of losses sustained by an employer on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;

(m) deductions for recovery of losses sustained by an employer on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the employer whether in respect of fares, freight, demurrage, wharfage and cranage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;

(n) deductions for recovery of losses sustained by an employer on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;

(o) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister's National Relief Fund or to such other fund as the Central Government may, by notification, specify.

(3) Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (2) in any wage period from the wages of an employee shall not exceed fifty per cent. of such wages.

(4) Where the total deductions authorised under sub-section (2) exceed fifty per cent. of the wages, the excess may be recovered in such manner, as may be prescribed.

Fines.

**19.** (1) No fine shall be imposed on any employee save in respect of such acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.

(3) No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage period on any employee shall not exceed an amount equal to three per cent. of the wages payable to him in respect of that wage period.

(5) No fine shall be imposed on any employee who is under the age of fifteen years.

(6) No fine imposed on any employee shall be recovered from him by instalments or after the expiry of ninety days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

**20.** (1) Deductions may be made under clause (b) of sub-section (2) of section 18 only on account of the absence of an employee from the place or places whereby the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

Deductions for  
absence from  
duty.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage period during which by the terms of his employment he was required to work:

Provided that, subject to any rules made in this behalf by the appropriate Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

*Explanation.*—For the purposes of this section, an employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

**21.** (1) A deduction under clause (c) or clause (n) of sub-section (2) of section 18 for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee.

Deductions for  
damage or  
loss.

(2) A deduction shall not be made under sub-section (1) until the employee has been given an opportunity of showing cause against the deduction or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(3) All such deductions and all realisations thereof shall be recorded in a register to be kept in such form as may be prescribed.

**22.** A deduction under clause (d) or clause (e) of sub-section (2) of section 18 shall not be made from the wages of an employee, unless the house-accommodation amenity or service has been accepted by him as a term of employment or otherwise and such deduction shall not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied and shall be subject to such conditions as the appropriate Government may impose.

Deductions  
for services  
rendered.

**23.** Deductions under clause (f) of sub-section (2) of section 18 for recovery of advances given to an employee shall be subject to the following conditions, namely:—

Deductions  
for recovery  
of advances.

(a) recovery of advance of money given to an employee before the employment began shall be made from the first payment of wages to him in respect of a complete wage period but no recovery shall be made of such advances given for travelling expenses;

(b) recovery of advance of money given to an employee after the employment began shall be subject to such conditions as may be prescribed;

(c) recovery of advances of wages to an employee not already earned shall be subject to such conditions as may be prescribed.

**24.** Deductions under clause (g) of sub-section (2) of section 18 for recovery of loans granted to an employee, regulating the extent to which such loans may be granted and the rate of interest payable thereon, shall be such as may be prescribed.

Deductions  
for recovery  
of loans.

Chapter not  
to apply to  
Government  
establishments.

**25.** The provisions of this Chapter shall not apply to the Government establishments unless the appropriate Government, by notification, applies such provisions to the Government establishments specified in the said notification.

#### CHAPTER IV

##### PAYMENT OF BONUS

Eligibility for  
bonus, etc.

**26.** (1) There shall be paid to every employee, drawing wages not exceeding such amount per mensem as determined by notification by the appropriate Government, by his employer, who has put in at least thirty days work in an accounting year, an annual minimum bonus calculated at the rate of eight and one-third per cent. of the wages earned by the employee or one hundred rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year.

(2) For the purpose of calculation of the bonus where the wages of the employee exceeds such amount per mensem, as determined by notification, by the appropriate Government, the bonus payable to such employee under sub-sections (1) and (3) shall be calculated as if his wage were such amount, so determined by the appropriate Government or the minimum wage fixed by the appropriate Government, whichever is higher.

(3) Where in respect of any accounting year referred to in sub-section (1), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that sub-section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the wages earned by the employee during the accounting year, subject to a maximum of twenty per cent. of such wages.

(4) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.

(5) Any demand for bonus in excess of the bonus referred to in sub-section (1), either on the basis of production or productivity in an accounting year for which the bonus is payable shall be determined by an agreement or settlement between the employer and the employees, subject to the condition that the total bonus including the annual minimum bonus referred to in sub-section (1) shall not exceed twenty per cent. of the wages earned by the employee in the accounting year.

(6) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36.

(7) For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply subject to the following modifications, namely:—

(i) for the sixth accounting year set on or set off, as the case may be, shall be made in the manner illustrated in the First Schedule taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth and sixth accounting years;

(ii) for the seventh accounting year set on or set off, as the case may be, shall be made in the manner illustrated in the First Schedule taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the fifth, sixth and seventh accounting years.

(8) From the eighth accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

*Explanation 1.*—For the purpose of sub-section (6), an employer shall not be deemed to have derived profit in any accounting year, unless—

(a) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

*Explanation 2.*—For the purposes of sub-sections (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

(9) The provisions of sub-sections (6), (7) and (8) shall, so far as may be, apply to new departments or undertakings or branches set-up by existing establishments.

**27.** Where an employee has not worked for all the working days in an accounting year, the minimum bonus under sub-section (1) of section 26, if such bonus is higher than eight and one-third per cent. of the salary or wage of the days such employee has worked in that accounting year, shall be proportionately reduced.

Proportionate reduction in bonus in certain cases.

**28.** For the purposes of section 27, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which,—

Computation of number of working days.

20 of 1946.  
14 of 1947.

(a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

(b) he has been on leave with salary or wages;

(c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(d) the employee has been on maternity leave with salary or wages, during the accounting year.

**29.** Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for—

Disqualification for bonus.

(a) fraud; or

(b) riotous or violent behaviour while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment; or

(d) conviction for sexual harassment.

**30.** Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Code:

Establishments to include departments, undertakings and branches.

Provided that wherefor any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking

or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Code for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Payment of  
bonus out of  
allocable  
surplus.

**31.** (1) The bonus shall be paid out of the allocable surplus which shall be an amount equal to sixty per cent. in case of a banking company and sixty-seven per cent. in case of other establishment, of the available surplus and the available surplus shall be the amount calculated in accordance with section 33.

(2) Audited accounts of companies shall not normally be questioned.

(3) Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance-sheet before it, but the authority shall not disclose any information contained in the balance-sheet unless agreed to by the employer.

Computation  
of gross  
profits.

**32.** The gross profits derived by an employer from an establishment in respect of the accounting year shall,—

(a) in the case of a banking company, be calculated in the manner specified in the Second Schedule;

(b) in any other case, be calculated in the manner specified in the Third Schedule.

Computation  
of available  
surplus.

**33.** The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34:

Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of—

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 34; and

(b) an amount equal to the difference between—

(i) the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

Sums  
deductible  
from gross  
profits.

**34.** The following sums shall be deducted from the gross profits as prior charges, namely:—

(a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be:

Provided that where an employer has been paying bonus to his employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer, which is to be exercised once and within one year from that date, continue to be such notional normal depreciation;



(b) any amount by way of development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act;

(c) subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;

(d) such further sums as are specified in respect of the employer in the Fourth Schedule.

**35.** Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

Calculation of direct tax payable by employer.

(a) in calculating such tax no account shall be taken of,—

(i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (2) of section 32 of the Income-tax Act;

(iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;

10 of 1965.

(b) where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;

(c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;

(d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

(e) no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

**36.** (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, then, the excess shall, subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in the manner illustrated in the First Schedule.

Set on and set off of allocable surplus.

(2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 26, and there is no amount or sufficient amount

carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the First Schedule.

(3) The principle of set on and set off as illustrated in the First Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Code.

(4) Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Adjustment of customary or interim bonus against bonus payable under this Code.

**37.** Where in any accounting year,—

(a) an employer has paid any *puja* bonus or other customary bonus to employee; or

(b) an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable,

then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

Deduction of certain amounts from bonus payable.

**38.** Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Code in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

Time limit for payment of bonus.

**39.** (1) All amounts payable to an employee by way of bonus under this Code shall be paid by crediting it in the bank account of the employee by his employer within a period of eight months from the close of the accounting year:

Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of eight months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed two years.

(2) Notwithstanding anything contained in sub-section (1), where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid, within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute:

Provided that if, there is a dispute for payment at the higher rate, the employer shall pay eight and one third per cent. of the wages earned by the employee as per the provisions of this Code within a period of eight months from the close of the accounting year.

Application of this Chapter to establishments in public sector in certain cases.

**40.** (1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than twenty per cent. of the gross income of the establishment in public sector for that year, then, the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) Save as otherwise provided in sub-section (1), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

**41.** (1) Nothing in this Chapter shall apply to—

(a) employees employed by the Life Insurance Corporation of India;

(b) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;

(c) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;

(d) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;

(e) employees employed by—

(i) the Indian Red Cross Society or any other institution of a like nature including its branches;

(ii) universities and other educational institutions;

(iii) institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;

(f) employees employed by the Reserve Bank of India;

(g) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to—

(i) its capital structure;

(ii) its objectives and the nature of its activities;

(iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;

(h) employees employed by inland water transport establishments operating on routes passing through any other country; and

(i) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

(2) Subject to the provisions of sub-section (1) and notwithstanding anything contained in any other provisions of this Chapter, the provisions of this Chapter shall apply to such establishment in which twenty or more persons are employed or were employed on any day during an accounting year.

## CHAPTER V

### ADVISORY BOARD

**42.** (1) The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government—

(a) representing employers;

(b) representing employees which shall be equal in number of the members specified in clause (a); and

(c) independent persons, not exceeding one-third of the total members of the Board.

Non-  
applicability  
of this  
Chapter.

Central  
Advisory  
Board and  
State  
Advisory  
Boards.

44 of 1958.

9 of 1948.

(2) One-third of the members referred to in sub-section (1) shall be women and a member specified in clause (c) of the said sub-section shall be appointed by the Central Government as the Chairperson of the Board.

(3) The Central Advisory Board constituted under sub-section (1) shall from time to time advise the Central Government on reference of issues relating to—

(a) fixation or revision of minimum wages and other connected matters;

(b) providing increasing employment opportunities for women;

(c) the extent to which women may be employed in such establishments or employments as the Central Government may, by notification, specify in this behalf; and

(d) any other matter relating to this Code,

and on such advice the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.

(4) Every State Government shall constitute a State Advisory Board for advising the State Government—

(a) in fixation or revision of minimum wages and other connected matters;

(b) for the purpose of providing increasing employment opportunities for women;

(c) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and

(d) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.

(5) The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in clauses (a) to (d) of sub-section (4).

(6) The State Advisory Board and each of the committees and sub-committees thereof shall consist of persons—

(a) representing employers;

(b) representing employees which shall be equal in number of the members specified in clause (a); and

(c) independent persons, not exceeding one-third of the total members of the Board or committee or sub-committee, as the case may be.

(7) One-third of the members referred to in sub-section (6) shall be women and one among the members specified in clause (c) of the said sub-section shall—

(a) be appointed by the State Government as the Chairperson of the Board;

(b) be appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.

(8) In tendering its advice in the matters specified in clause (b) or clause (c) of sub-section (4), the State Advisory Board shall have regard to the number of women employed in the concerned establishment, or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the Board may think fit.

(9) The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishment or employees or any other person which that Government thinks fit, issue such direction as may be deemed necessary.

(10) The Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) shall respectively regulate their own procedure including that of the committees and sub-committees constituted by the State Advisory Board, in such manner as may be prescribed.

(11) The terms of office of the Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) including that of the committees and sub-committees constituted by the State Advisory Board, shall be such as may be prescribed.

## CHAPTER VI

### PAYMENT OF DUES, CLAIMS AND AUDIT

**43.** Every employer shall pay all amounts required to be paid under this Code to every employee employed by him:

Responsibility for payment of various dues.

Provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

9 of 1932.

*Explanation.*—For the purposes of this section the expression "firm" shall have the same meaning as assigned to it in the Indian Partnership Act, 1932.

**44.** (1) Subject to the other provisions of this Code, all amounts payable to an employee under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known,—

Payment of various undistributed dues in case of death of employee.

(a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Code; or

(b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with such authority, as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.

(2) Where in accordance with the provisions of sub-section (1), all amounts payable to an employee under this Code—

(a) are paid by the employer to the person nominated by the employee; or

(b) are deposited by the employer with the authority referred to in clause (b) of sub-section (1),

then, the employer shall be discharged of his liability to pay those amounts.

**45.** (1) The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted officer, to hear and determine the claims which arise under the provisions of this Code.

Claims under Code and procedure thereof.

(2) The authority appointed under sub-section (1), while deciding the claim under that sub-section, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined and endeavour shall be made by the authority to decide the claim within a period of three months.

(3) If an employer fails to pay the claim determined and compensation ordered to be paid under sub-section (2), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.

(4) Any application before the authority for claim referred to in sub-section (1) may be filed by,—

(a) the employee concerned; or

(b) any Trade Union registered under the Trade Unions Act, 1926 of which the employee is a member; or

16 of 1926.

(c) the Facilitator.

(5) Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.

(6) The application under sub-section (4) may be filed within a period of three years from the date on which claims referred to in sub-section (1) arises:

Provided that the authority referred to in sub-section (1) may, entertain the application after three years on sufficient cause being shown by the applicant for such delay.

(7) The authority appointed under sub-section (1) and the appellate authority appointed under sub-section (1) of section 49, shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

5 of 1908.

2 of 1974.

Reference of disputes under this Code.

**46.** Notwithstanding anything contained in this Code, where any dispute arises between an employer and his employees with respect to—

(a) fixation of bonus or eligibility for payment of bonus under the provisions of this Code; or

(b) the application of this Code, in respect of bonus, to an establishment in public sector,

then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947.

14 of 1947.

Presumption about accuracy of balance-sheet and profit and loss account of corporations and companies.

**47. (1)** Where, during the course of proceedings before—

(a) the authority under section 45; or

(b) the appellate authority under section 49; or

(c) a Tribunal; or

(d) an arbitrator referred to in clause (aa) of section 2 of the Industrial Disputes Act, 1947,

14 of 1947.

in respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance-sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under section 141 of the Companies Act, 2013, are produced before it, then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance-sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode:

18 of 2013.

Provided that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance-sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.



(2) When an application is made to the authority, appellate authority, Tribunal or arbitrator, as the case may be, referred to in sub-section (1), by any Trade Union being a party to the dispute or as the case may be, an appeal, and where there is no Trade Union, by the employees being a party to the dispute, or as the case may be, an appeal, requiring any clarification relating to any item in the balance-sheet or the profit and loss account, then such authority, appellate authority, Tribunal or arbitrator, may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

**48.** (1) Where any claim, dispute or appeal with respect to bonus payable under this Code between an employer, not being a corporation or a company, and his employees is pending before any authority, appellate authority, Tribunal or arbitrator, as the case may be, as referred to in sub-section (1) of section 47 and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under the provisions of section 141 of the Companies Act, 2013, are produced before such authority, appellate authority, Tribunal or arbitrator, then the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

Audit of accounts of employers, not being corporations or companies.

18 of 2013.

(2) When the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, such authority, appellate authority, Tribunal or arbitrator, may, by order, direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.

(3) Where an employer fails to get the accounts audited under sub-section (2) the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.

(4) When the accounts are audited under sub-section (2) or sub-section (3), the provisions of section 47 shall, so far as may be, apply to the accounts so audited.

(5) The expenses of, and incidental to, any audit under sub-section (3) including the remuneration of the auditor or auditors shall be determined by the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, and paid by the employer and in default of such payment shall be recoverable by the authority referred to in sub-section (3) of section 45 from the employer in the manner provided in that sub-section.

**49.** (1) Any person aggrieved by an order passed by the authority under sub-section (2) of section 45 may prefer an appeal, to the appellate authority having jurisdiction appointed by the appropriate Government, by notification, for such purpose, within ninety days from the date of such order, in such form and manner as may be prescribed:

Appeal.

Provided that the appellate authority may entertain the appeal after ninety days if it satisfied that the delay in filing the appeal has occurred due to sufficient cause.

(2) The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under sub-section (1) of section 45.

(3) The appellate authority shall, after hearing the parties in the appeal, dispose of the appeal and endeavour shall be made to dispose of the appeal within a period of three months.

(4) The outstanding dues under the orders of the appellate authority shall be recovered by the authority referred to in section 45, by issuing the certificate of recovery in the manner specified in sub-section (3) of that section.

Records,  
returns and  
notices.

**50.** (1) Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages, and such other details in such manner as may be prescribed.

(2) Every employer shall display a notice on the notice board at a prominent place of the establishment containing the abstract of this Code, category-wise wage rates of employees, wage period, day or date and time of payment of wages, and the name and address of the Facilitator having jurisdiction.

(3) Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.

(4) The provisions of sub-sections (1) to (3) shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose:

Provided that such employer, when demanded, shall produce before the Facilitator, the reasonable proof of the payment of wages to the persons so employed.

*Explanation.*—For the purposes of this sub-section, the expression "domestic purpose" means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation.

## CHAPTER VII

### FACILITATOR

Appointment  
of Facilitators  
and their  
powers.

**51.** (1) The appropriate Government may, by notification, appoint Facilitators who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned to them, in relation to establishments situated in such State or geographical limits, as the case may be.

(2) The appropriate Government may, by notification, lay down an inspection scheme which shall also provide for generation of a web-based inspection schedule.

(3) Every Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

(4) The Facilitator may, within the local limits of his jurisdiction—

(a) supply information and advice to employers and workers concerning the most effective means of complying with the provisions of this Code;

(b) inspect the establishment based on inspection scheme referred to in sub-section (2).

(5) Subject to the provisions of sub-section (4), the Facilitator may,—

(a) examine any person who is found in any premises of the establishment, whom the Facilitator has reasonable cause to believe, is a worker of the establishment;

(b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

(c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Facilitator may consider relevant in respect of an offence under this Code and which the Facilitator has reason to believe has been committed by the employer;

(d) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and

(e) exercise such other powers as may be prescribed.

45 of 1860. (6) Any person required to produce any document or to give any information required by a Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

2 of 1974. (7) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-section (5) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

## CHAPTER VIII

### OFFENCES AND PENALTIES

16 of 1926. **52.** (1) No court shall take cognizance of any offence punishable under this Code, save on a complaint made by or under the authority of the appropriate Government or an officer authorised in this behalf, or by an employee or a registered Trade Union registered under the Trade Unions Act, 1926 or a Facilitator. Cognizance of offences.

2 of 1974. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try the offences under this Code.

**53.** (1) Any employer who—

Penalties for offences.

(a) pays to any employee less than the amount due to such employee under the provisions of this Code shall be punishable with fine which may extend to fifty thousand rupees;

(b) having been convicted of an offence under clause (a) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both;

(c) contravenes any other provision of this Code or any rule made or order made or issued thereunder shall be punishable with fine which may extend to twenty thousand rupees;

(d) having been convicted of an offence under clause (c) is again found guilty of similar offence under this clause, within five years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to forty thousand rupees, or with both.

(2) Notwithstanding anything contained in sub-section (1), for the offences of non-maintenance or improper maintenance of records in the establishment, the employer shall be punishable with fine which may extend to ten thousand rupees.

(3) Notwithstanding anything contained in clause (c) of sub-section (1) or sub-section (2), the Facilitator shall, before initiation of prosecution proceeding for the offences under the said clause or sub-section, give an opportunity to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with the direction within such period, the Facilitator shall not initiate such prosecution proceeding and, no such opportunity shall be accorded to an employer, if the violation of the same nature of the provisions under this Code is repeated within a period of five years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Code.

**54.** (1) If the person committing an offence under this Code is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be

Offences by companies.

deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) "company" means anybody corporate and includes—

(i) a firm; or

(ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or

6 of 2009.

(iii) other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Composition  
of offences.

**55.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent. of the maximum fine provided for such offence, in the manner as may be prescribed.

2 of 1974.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date—

(i) of commission of a similar offence which was earlier compounded;

(ii) of commission of similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.

(4) Every application for the compounding of an offence shall be made in such manner as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

(7) Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be punishable with a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

(8) No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section.

## CHAPTER IX

## MISCELLANEOUS

**56.** No court shall entertain any suit for the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus, in so far as the sum so claimed—

Bar of suits.

(a) forms the subject of claims under section 45;

(b) has formed the subject of a direction under this Code; or

(c) has been adjudged in any proceeding under this Code;

(d) could have been recovered under this Code.

**57.** No suit, prosecution or any other legal proceeding shall lie against the appropriate Government or any officer of that Government for anything which is in good faith done or intended to be done under this Code.

Protection of action taken in good faith.

**58.** Where a claim has been filed on account of non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Code from the wages of an employee, the burden to prove that the said dues have been paid shall be on the employer.

Burden of proof.

**59.** Any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under this Code shall be null and void in so far as it purports to remove or reduce the liability of any person to pay such amount under this Code.

Contracting out.

**60.** The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

Effect of laws, agreements, etc., inconsistent with this Code.

**61.** The appropriate Government may, by notification, direct that any power exercisable by it under this Code shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be also exercisable—

Delegation of powers.

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

**62.** Where an employer is charged with an offence under this Code, he shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

Exemption of employer from liability in certain cases.

(a) that he has used due diligence to enforce the execution of this Code; and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance,

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Code in respect of such offence:

Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination

by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

Protection  
against  
attachment of  
assets of  
employer  
with  
Government.

**63.** Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

Power of  
Central  
Government  
to give  
directions.

**64.** The Central Government may, for carrying into execution of the provisions of this Code in the State give directions to the State Government, and the State Government shall abide by such directions.

Savings.

**65.** Nothing contained in this Code shall be deemed to affect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Coal Mines Provident Fund and Bonus Schemes Act, 1948, or of any scheme made thereunder.

42 of 2005.  
46 of 1948.

Power of  
appropriate  
Government  
to make rules.

**66.** (1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the provisions of this Code.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of calculating the wages under sub-section (4) of section 6;

(b) the cases and circumstances in which an employee employed for a period of less than the requisite number of hours shall not be entitled to receive wages for a full normal working day, under section 10;

(c) the extent and conditions, which shall apply in relation to certain classes of employees under sub-section (2) of section 13;

(d) the longer wage period for fixation of minimum rate of wages as referred in section 14;

(e) the manner of deducting loans made from any fund constituted for the welfare of labour under sub-clause (ii) of clause (f) of sub-section (2) of section 18;

(f) the manner of recovery of excess of amount under sub-section (4) of section 18;

(g) the authority to provide approval for imposition of fine under sub-section (1) of section 19;

(h) the manner of exhibition of the acts and omissions to be specified in the notice under sub-section (2) of section 19;

(i) the procedure for the imposition of fines under sub-section (3) of section 19;

(j) the form of the register to record all fines and all realisations thereof under sub-section (8) of section 19;

(k) the procedure for making deductions for absence from duty under sub-section (2) of section 20;

(l) the procedure for making deductions for damage or loss under sub-section (2) of section 21;

(m) the form of the register to record all deductions and all realisations thereof under sub-section (3) of section 21;

(n) conditions for recovery of advance of money given to an employee after the employment began under clause (b) of section 23;



(o) conditions for recovery of advances of wages to an employee not already earned under clause (c) of section 23;

(p) deductions for recovery of loans and the rate of interest payable thereon under section 24;

(q) manner of regulating the procedure by the Central Advisory Board and the State Advisory Board, including that of the committees and sub-committees constituted by the State Advisory Board, under sub-section (10) of section 42;

(r) the terms of office of members of the Central Advisory Board, the State Advisory Board, including that the committees and sub-committees constitute by the State Advisory Board, under sub-section (11) of section 42;

(s) the authority and manner of depositing with such authority, various undisbursed dues under clause (b) of sub-section (1) of section 44;

(t) form of single application in respect of a number of employees under sub-section (5) of section 45;

(u) form for making an appeal to the appellate authority under sub-section (1) of section 49;

(v) the manner of maintenance of a register by the employer under sub-section (1) of section 50;

(w) the form and manner of issuing wage slips under sub-section (3) of section 50;

(x) the other powers to be exercised by the Facilitators under sub-section (5) of section 51;

(y) the manner of imposing fine under sub-section (1) of section 55;

(z) the manner of composition of offence by a Gazetted Officer specified under sub-section (4) of section 55;

(za) any other matter which is required to be, or may be, prescribed under the provisions of this Code.

(3) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions as aforesaid, both Houses agree in making any modification in the rule or both Houses agree that rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or amendment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this section shall, as soon as possible after it is made, be laid before the State Legislature.

**67.** (1) If any difficulty arises in giving effect to the provisions of this Code, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code, as may appear to be necessary for removing the difficulty:

Power to  
remove  
difficulties.

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Code.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.



Repeal and  
savings.

**68.** (1) The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976 are hereby repealed.

4 of 1936.  
11 of 1948.  
21 of 1965.  
25 of 1976.

(2) Notwithstanding such repeal, anything done or any action taken under the enactments so repealed including any notification, nomination, appointment, order or direction made thereunder or any amount of wages provided in any provision of such enactments for any purpose shall be deemed to have been done or taken or provided for such purpose under the corresponding provisions of this Code and shall be in force to the extent they are not contrary to the provisions of this Code till they are repealed under the corresponding provisions of this Code or by the notification to that effect by the Central Government.

(3) Without prejudice to the provisions of sub-section (2), the provisions of section 6 of the General Clauses Act, 1897 shall apply to the repeal of such enactments.

10 of 1897.

## THE FIRST SCHEDULE

[See sections 26 (7) and 36]

In this Schedule, the total amount of bonus equal to eight and one-third per cent. of the annual wages payable to all the employees is assumed to be Rs. 1,04,167. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent. of the annual wages of all the employees) would be Rs. 2,50,000.

Year	Amount equal to sixty per cent. or sixty-seven per cent. as the case may be, of available surplus allocable as bonus	Amount payable as bonus	Set on or set off of the year carried forward	Total set on or set off carried forward	
	Rs.	Rs.	Rs.	Rs.	Of (year)
1.	1,04,167	1,04,167#	Nil	Nil	
2.	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000*	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year-2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)
5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year-2)	Nil	Set on 1,10,000 1,25,000	(2) (4)
6.	3,10,000	2,50,000*	Set on 60,000	Set on Nil ## 1,25,000 60,000	(2) (4) (6)
7.	1,00,000	2,50,000* (inclusive of 1,25,000 from year-4 and 25,000 from year-6)	Nil	Set on 35,000	(6)
8.	Nil (due to loss)	1,04,167# (inclusive of 35,000 from year-6)	Set on 69,167	Set off 69,167	(8)
9.	10,000	1,04,167#	Set off 94,167	Set off 69,167 94,167	(8) (9)
10.	2,15,000	1,04,167# (after setting off 69,167 from year-8 and 41,666 from year-9)	Nil	Set off 52,501	(9)

\*Maximum amount admissible.

# Minimum amount admissible.

##The Balance of Rs. 1,10,000 set on from year-2 lapses.

## THE SECOND SCHEDULE

[See section 32(a)]

## COMPUTATION OF GROSS PROFITS

Accounting year ending—

Item No.	Particulars	Amount of sub-items (in Rupees)	Amount of main items (in Rupees)	Remarks
1	2	3	4	5
* 1.	<i>Net profit</i> as shown in the Profit and Loss account after making usual and necessary provisions.			
2.	<i>Add back</i> provision for:			**
	(a) Bonus to employees			**
	(b) Depreciation			
	(c) Development rebate reserve			
	(d) Any other reserves			
	Total of Item No.2.....	Rs. ....		
3.	<i>Add back</i> also:			
	(a) Bonus paid to employees in respect of previous accounting years.			**
	(b) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of—			
	(i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and			
	(ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.			
	(c) Donations in excess of the amount admissible for income-tax.			
	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax).			**
	(e) Any amount certified by the Reserve Bank of India in terms of sub-section (2) of section 34A of the Banking Regulation Act, 1949 (10 of 1949).			
	(f) Losses of, or expenditure relating to, any business situated outside India.			
	Total of Item No.3.....	Rs. ....		
4.	<i>Add also</i> income, profits or gains (if any) credited directly to published or disclosed reserves, other than—			
	(i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax);			

1	2	3	4	5
	(ii) profits of, and receipts relating to, any business situated outside India;			
	(iii) income of foreign banking companies from investment outside India.			
	Net total of item No. 4.....	Rs. ....		
5.	Total of item Nos.1, 2, 3 and 4...	Rs. ....		
6.	<i>Deduct:</i>			
	(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax).			***
	(b) Profits of, and receipts relating to, any business situated outside India.			***
	(c) Income of foreign banking companies from investments outside India.			***
	(d) Expenditure or losses (if any) debited directly to published or disclosed reserves, other than—			
	(i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax);			
	(ii) losses of any business situated outside India.			***
	(e) In the case of foreign banking companies proportionate administrative (overhead) expenses of Head-Office allocable to Indian business.			***
	(f) Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting years, relating to bonus, depreciation or development rebate, if written back.			***
	(g) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes .			
	Total of Item No. 6 .....	Rs. ....		
7.	Gross profits for purposes of bonus (item No. 5 minus item No. 6)	Rs. ....		****

*Explanation.*—In sub-item (b) of item 3, “approved gratuity fund” has the same meaning assigned to it in clause (5) of section 2 of the Income-tax Act.

\* Where the profit subject to taxation is shown in the Profit and Loss account and the provision made for taxes on income is shown, the actual provision for taxes on income shall be deducted from the profit.

\*\* If, and to the extent, charged to profit and loss account.

\*\*\* If, and to the extent, credited to profit and loss account.

\*\*\*\* In the proportion of Indian Gross Profit (item No. 7) to Total World Gross Profit (as per consolidated profit and loss account adjusted as in item No. 2 above only).

## THE THIRD SCHEDULE

[See section 32(b)]

## COMPUTATION OF GROSS PROFITS

Accounting year ending—

Item No.	Particulars	Amount of sub-items (in Rupees)	Amount of main items (in Rupees)	Remarks
1	2	3	4	5
1.	<i>Net profit</i> as per profit and loss account.			
2.	<i>Add back</i> provision for:			
	(a) Bonus to employees.			
	(b) Depreciation.			
	(c) Direct taxes, including the provision (if any) for previous accounting years.			*
	(d) Development rebate/Investment allowance/ Development allowance reserve.			*
	(e) Any other reserves.....			
	Total of item No.2.....	Rs. ....		
3.	<i>Add back</i> also:			
	(a) Bonus paid to employees in respect of previous accounting years.			*
	(aa) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of—			
	(i) the amount, if any, paid to, or provided for payment to, an approved gratuity fund; and			
	(ii) the amount actually paid to employees on their retirement or on termination of their employment for any reason.			
	(b) Donations in excess of the amount admissible for income-tax.			
	(c) Any annuity due, or commuted value of any annuity paid, under the provisions of section 280D of the Income-tax Act during the accounting year.			*
	(d) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law for the time being in force relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax or agricultural income-tax).			*
	(e) Losses of, or expenditure relating to, any business situated outside India.			
	Total of item No.3.....	Rs. ....		

1	2	3	4	5
4.	<p>Add also income, profits or gains (if any) credited directly to reserves, other than—</p> <p>(i) capital receipts and capital profits (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);</p> <p>(ii) profits of, and receipts relating to, any business situated outside India;</p> <p>(iii) income of foreign concerns from investment outside India.</p> <p>Net total of item No. 4.....</p>	Rs. ....		
5.	Total of item Nos.1, 2, 3 and 4...	Rs. ....		
6.	<p>Deduct:</p> <p>(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax).</p> <p>(b) Profits of, and receipts relating to, any business situated outside India.</p> <p>(c) Income of foreign concerns from investments outside India.</p> <p>(d) Expenditure or losses (if any) debited directly to reserves, other than—</p> <p>(i) capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax);</p> <p>(ii) losses of any business situated outside India.</p> <p>(e) In the case of foreign concerns proportionate administrative (overhead) expenses of Head Office allocable to Indian business.</p> <p>(f) Refund of any excess direct tax paid for previous accounting years and excess provision, if any, of previous accounting years, relating to bonus, depreciation, taxation or development rebate or development allowance, if written back.</p> <p>(g) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants, whether given directly or through any agency for specified purposes and the proceeds of which are reserved for such purposes.</p> <p>Total of item No. 6 .....</p>			<p>* *</p> <p>* *</p> <p>* *</p> <p>* * *</p> <p>* *</p> <p>* *</p>
7.	Gross profits for purposes of bonus (item No. 5 minus item No. 6)	Rs. ....		

*Explanation.*—In sub-item (aa) of item 3, “approved gratuity fund” has the same meaning assigned to it in clause (5) of section 2 of the Income-tax Act.

\* If, and to the extent, charged to profit and loss account.

\* \* If, and to the extent, credited to profit and loss account.

\*\*\* In the proportion of Indian Gross Profit (item No. 7) to Total World Gross Profit (as per consolidated profit and loss account, adjusted as in item No. 2 above only).

## THE FOURTH SCHEDULE

[See section 34(d)]

Item No.	Category of employer	Further sums to be deducted
1	2	3
1.	Company, other than a banking company	<p>(i) The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable;</p> <p>(ii) eight and a half per cent. of its paid-up equity share capital as at the commencement of the accounting year;</p> <p>(iii) six per cent. of its reserves shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year:</p> <p>Provided that where the employer is a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 (18 of 2013), the total amount to be deducted under this item shall be eight and a half per cent. on the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office whether towards any advance made by the Head Office or otherwise or any interest paid by the company to its Head Office) in India.</p>
2.	Banking Company	<p>(i) The dividends payable on its preference share capital for the accounting year calculated at the rate at which such dividends are payable;</p> <p>(ii) seven and a half per cent. of its paid-up equity share capital as at the commencement of the accounting year;</p> <p>(iii) five per cent. of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year;</p> <p>(iv) any sum which, in respect of the accounting year, is transferred by it—</p> <p>(a) to a reserve fund under sub-section (1) of section 17 of the Banking Regulation Act, 1949 (10 of 1949); or</p> <p>(b) to any reserves in India in pursuance of any direction or advice given by the Reserve Bank of India,</p> <p>whichever is higher:</p> <p>Provided that where the banking company is a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 (18 of 2013), the amount to be deducted under this item shall be the aggregate of—</p> <p>(i) the dividends payable to its preference shareholders for the accounting year at the rate at which such dividends are payable on such amount as bears the same proportion to its total preference share capital as its total working funds in India bear to its total world working funds;</p> <p>(ii) seven and a half per cent. of such amount as bears the same proportion to its total paid-up equity share capital as its total working funds in India bear to its total world working funds;</p> <p>(iii) five per cent. of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total world working funds;</p> <p>(iv) any sum which, in respect of the accounting year, is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (2) of section 11 of the Banking</p>



1	2	3
3.	Corporation	<p>Regulation Act, 1949 (10 of 1949), not exceeding the amount required under the aforesaid provision to be so deposited.</p> <p>(i) Eight and a half per cent of its paid-up capital as at the commencement of the accounting year;</p> <p>(ii) six per cent. of its reserves, if any, shown in its balance-sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.</p>
4.	Co-operative society	<p>(i) Eight and a half per cent. of the capital invested by such society in its establishment as evidenced from its books of account at the commencement of the accounting year;</p> <p>(ii) such sums as has been carried forward in respect of the accounting year to a reserve fund under any law relating to co-operative societies for the time being in force.</p>
5.	Any other employer not falling under any of the aforesaid categories	<p>Eight and a half per cent. of the capital invested by him in his establishment as evidenced from his books of account at the commencement of the accounting year:</p> <p>Provided that where such employer is a person to whom Chapter XXII-A of the Income-tax Act applies, the annuity deposit payable by him under the provisions of that Chapter during the accounting year shall also be deducted:</p> <p>Provided further that where such employer is a firm, an amount equal to twenty-five per cent. of the gross profits derived by it from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 34 by way of remuneration to all the partners taking part in the conduct of business of the establishment shall also be deducted, but where the partnership agreement, whether oral or written, provides for the payment of remuneration to any such partner, and—</p> <p>(i) the total remuneration payable to all such partners is less than the said twenty-five per cent. the amount payable, subject to a maximum of forty-eight thousand rupees to each such partner; or</p> <p>(ii) the total remuneration payable to all such partners is higher than the said twenty-five per cent. such percentage, or a sum calculated at the rate of forty-eight thousand rupees to each such partner, whichever is less, shall be deducted under this proviso:</p> <p>Provided also that where such employer is an individual or a Hindu undivided family—</p> <p>(i) an amount equal to twenty-five per cent. of the gross profits derived by such employer from the establishment in respect of the accounting year after deducting depreciation in accordance with the provisions of clause (a) of section 34; or</p> <p>(ii) forty-eight thousand rupees,</p> <p>whichever is less by way of remuneration to such employer, shall also be deducted.</p>
6.	Any employer falling under item No. 1 or item No. 3 or item No. 4 or item No. 5 and being a licensee defined in clause (39) of section 2 of the Electricity Act, 2003 (36 of 2003).	<p>In addition to the sums deductible under any of the aforesaid Items such sums as are required to be appropriated by licensee in respect of the accounting year to a reserve, if any, shall also be deducted.</p>

*Explanation.*—The expression “reserves” occurring in column (3) against Item Nos. 1(iii), 2(iii) and 3(ii) shall not include any amount set apart for the purpose of—

(i) payment of any direct tax which, according to the balance-sheet, would be payable;

(ii) meeting any depreciation admissible in accordance with the provisions of clause (a) of section 34;

(iii) payment of dividends which have been declared,

but shall include—

(a) any amount, over and above the amount referred to in clause (i) of this *Explanation*, set apart as specific reserve for the purpose of payment of any direct tax; and

(b) any amount set apart for meeting any depreciation in excess of the amount admissible in accordance with the provisions of clause (a) of section 34.

## STATEMENT OF OBJECTS AND REASONS

The Second National Commission on Labour, which submitted its report in June, 2002 had recommended that the existing set of labour laws should be broadly amalgamated into the following groups, namely:—

- (a) industrial relations;
- (b) wages;
- (c) social security;
- (d) safety; and
- (e) welfare and working conditions.

2. In pursuance of the recommendations of the said Commission and the deliberations made in the tripartite meeting comprising of the Government, employers' and industry representatives, it has been decided to bring the proposed legislation, namely, the Code on Wages, 2017. The proposed legislation intends to amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely:—

- (a) the Payment of Wages Act, 1936;
- (b) the Minimum Wages Act, 1948;
- (c) the Payment of Bonus Act, 1965; and
- (d) the Equal Remuneration Act, 1976.

3. The amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers. The proposed legislation would bring the use of technology in its enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement. Widening the scope of minimum wages to all workers would be a big step for equity. The facilitation for ease of compliance of labour laws will promote in setting up of more enterprises thus catalysing the creation of employment opportunities.

4. The salient features of the Code on Wages, 2017, *inter alia*, are as follows:—

- (a) it provides for all essential elements relating to wages, equal remuneration, its payment and bonus;
- (b) the provisions relating to wages shall be applicable to all employments covering both organised as well as un-organised sectors;
- (c) the power to fix minimum wages continues to be vested in the Central Government as well the State Government in their respective spheres;
- (d) it enables the appropriate Government to determine the factors by which the minimum wages shall be fixed for different category of employees. The factors shall be determined taking into account the skills required, the arduousness of the work assigned, geographical location of the workplace and other aspects which the appropriate Government considers necessary;
- (e) the provisions relating to timely payment of wages and authorised deductions from wages, which are presently applicable only in respect of employees drawing wages up to eighteen thousand rupees per month, shall be made applicable to all employees irrespective of wage ceiling. The appropriate Government may extend the coverage of such provisions to the Government establishments also;
- (f) it provides that the wages to employees may also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee. However, the appropriate Government may specify the industrial or other

establishment, where the wages are to be paid only by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee;

(g) it provides for national minimum wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the national minimum wage, notified for that area by the Central Government;

(h) in order to remove the arbitrariness and malpractices in inspection, it empowers the appropriate Government to appoint Facilitators in the place of Inspectors, who would supply information and advice the employers and workers concerning the most effective means of complying with the provisions of the proposed legislation. It has also been provided that the inspections are carried out through a transparent/web based inspection scheme.

(i) it empowers the appropriate Government to determine the ceiling of wage limit for the purpose of eligibility of bonus and calculation of bonus, by notification, which will make it easier to revise ceilings;

(j) in the place of number of authorities at multiple levels, it empowers the appropriate Government to appoint one or more authorities to hear and decide the claims under the provisions of the proposed legislation;

(k) it enables the appropriate Government to appoint an appellate authority to hear appeals so as to ensure speedy, cheaper and efficient redressal of grievances and settlement of claims;

(l) it provides for graded penalty for different types of contraventions of the provisions of the proposed legislation;

(m) it provides that the Facilitator shall give an opportunity to the employer before initiation of prosecution proceedings in cases of contravention, so as to comply with the provisions of the proposed legislation. However, in case of repetition of the contravention within a period of five years such opportunity shall not be provided;

(n) it provides for compounding of those offences which are not punishable with imprisonment;

(o) it provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the proposed legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee;

(p) it enables the appropriate Government to constitute Advisory Boards at Central and State levels to advise the Central Government and the State Governments, respectively, on matters relating to wages, women employment, etc.;

(q) the period of limitation for filing of claims by a worker has been enhanced to 3 years as against existing time period varying from 6 months to 2 years, to provide a worker more time to settle his claims.

5. The notes on clauses explain in detail the various provisions contained in the Bill.

6. The Bill seeks to achieve the above objectives.

*Notes on Clauses*

*Clause 2* of the Bill seeks to define certain expressions used in the Code, which, *inter alia*, include “accounting year”, “Advisory Board”, “appropriate Government”, “employee”, “employer”, “Tribunal”, “wages” and “worker”.

*Clause 3* of the Bill seeks to provide for the prohibition of discrimination on ground of gender. It also provides that no employer shall, for the purpose of prohibiting the discrimination among employees on ground of sex in matters relating to wages, shall reduce the rates of wages of any employee.

*Clause 4* of the Bill provides for determination of disputes with regard to same or similar nature of work. The dispute shall be decided by such authority as may be notified by the appropriate Government.

*Clause 5* of the Bill seeks to provide for payment of minimum rates of wages. The wages less than the minimum rates of wages notified by the appropriate Government for a State or any part thereof shall not be paid to any employee.

*Clause 6* of the Bill seeks to provide for fixation of minimum wages. Such fixation of minimum wages by the appropriate Government shall be subject to the powers of the Central Government to fix national minimum wages. The minimum wages shall be for time work, piece work, and for the period by hours or day or month.

*Clause 7* of the Bill seeks to provide components of the minimum wages. Any minimum rate of wages fixed or revised by the appropriate Government may, *inter alia*, consist of basic rate, cost of living allowance and value of the concessions, if any.

*Clause 8* of the Bill seeks to provide the procedure for fixing and revising minimum wages.

*Clause 9* of the Bill seeks to provide the power of Central Government to fix national minimum wages. Different national minimum wages may be fixed for different States or different geographical areas. The Central Government before fixing the national minimum wage may obtain the advice of the Central Advisory Board.

*Clause 10* of the Bill seeks to provide, *inter alia*, for wages of employee who works for less than normal working day. An employee, where his failure to work is caused by his un-willingness to work and not by omission of the employer to provide him with work, shall not be entitled to receive wages for a full normal working day.

*Clause 11* of the Bill seeks to provide wages for two or more classes of work. It provides that an employee who does two or more classes of work to each of which different rate of minimum wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in such class of work, wages at not less than the minimum rate in force in respect of each such class.

*Clause 12* of the Bill seeks to provide minimum time rate wages for piece work.

*Clause 13* of the Bill seeks to provide for fixing hours of work for normal working day, day of rest and payment for work on day of rest by the appropriate Government.

*Clause 14* of the Bill seeks to provide for payment of wages for overtime work which is in excess of the number of hours constituting a normal working and the overtime rate shall not be less than twice the normal rate of wages.

*Clause 15* of the Bill seeks to provide for payment of all wages in current coin or currency notes or by cheque or through digital or electronic mode or by crediting the wages in the bank account of the employee except as may be notified by the appropriate Government in specified industrial or other establishment in which wages to be paid only by cheque or through digital or electronic mode or by crediting in bank account.

*Clause 16* of the Bill seeks to provide for fixation of wage period for employees which shall not be more than a month either as daily or weekly or fortnightly or monthly and the said wage periods may be fixed different for different establishments.

*Clause 17* of the Bill seeks to provide time limit for payment of wages on monthly basis, daily basis, weekly basis and fortnightly basis. In case of removal, dismissal, retrenchment, resignation from service or in the case of un-employment due to closure of the establishment, the wages payable to an employee shall be paid within two weeks. The appropriate Government may provide time limit apart from the time limit provided in this clause.

*Clause 18* of the Bill provides for deductions which may be made from the wages of an employee. No deduction from the wages shall be made except those as are authorised under the proposed legislation. The upper ceiling of deduction is fifty per cent. of the wage in any wage period.

*Clause 19* of the Bill seeks to provide the imposition of fines by the employer on any employee. The fine shall be imposed on any employee only in accordance with the approval and procedure as specified in the clause.

*Clause 20* of the Bill seeks to provide for the deductions for absence from duty. The amount of such deductions shall in no case bear to the wages payable to the employee in respect of the wage period for which the deductions is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employment he was required to work. An employee shall be deemed to be absent from the place where he is required to work if, although presence in such place, he refuses in pursuance of a stay-in strike for any other cause which is not reasonable in the circumstances, to carry out his work.

*Clause 21* of the Bill seeks to provide deductions for damage or loss. The deductions for damage or loss shall not exceed the amount of the damage or loss caused to the employer by negligence or default of the employee. The deductions shall not be met until the employee has been provided an opportunity of showing cause against the deductions or otherwise than in accordance with the procedure prescribed by rules.

*Clause 22* of the Bill provides for deductions for services rendered. Such deductions shall not be made from the wages of employee unless the house accommodation, amenity or service has been accepted by him as a term of employment or as otherwise. Such deductions shall also not exceed an amount equivalent to the value of such amenity or service supplied. The appropriate Government may impose conditions for such purpose.

*Clause 23* of the Bill seeks to provide for deductions for recovery of advances. Certain conditions have been provided in the said clause subject to which the deductions shall be made for the recovery of advance of money given to an employee before and after the employment began.

*Clause 24* of the Bill seeks to provide deductions for recovery of loans and the manner for such recovery shall be provided in the rules.

*Clause 25* of the Bill seeks to provide that the provisions relating to payment of wages provided in Chapter III in the proposed Code shall not be applicable to Government establishments unless the appropriate Government applies such provisions to any Government establishment as may be specified by it by notification.

*Clause 26* of the Bill seeks to make provisions for eligibility for bonus. The threshold limit for payment of the bonus is the wages not exceeding such amount per mensem as determined by notification, by the appropriate Government. Where the wages of the employee exceeds such amount per *mensem*, as determined by notification, by the appropriate Government, the bonus payable to such employee shall be calculated as if the wages of such employee were such amount, so determined by the appropriate Government or the

minimum wages fixed by the appropriate Government, whichever is higher. The other details regarding the payment of bonus have also been provided in this clause.

*Clause 27* of the Bill seeks to provide for proportionate reduction in bonus in case where an employee has not worked for all the working days in an accounting year, etc.

*Clause 28* of the Bill seeks to provide for computation of the number of working days for the purposes where an employee has not worked for all the working days in an accounting year. Provisions have been made in this clause to cover certain days as working days as specified therein.

*Clause 29* of the Bill seeks to specify certain disqualifications, on the basis of dismissal from service for fraud, etc., for receiving bonus.

*Clause 30* of the Bill seeks to provide for the purposes of computation of bonus that the establishment shall include its departments, undertakings and branches, where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus for the accounting year, such department, undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

*Clause 31* of the Bill seeks to provide for payment of bonus out of allocable surplus. It also empowers the appropriate Government to notify the authority having jurisdiction for calling upon the employer to produce the balance sheet before it.

*Clause 32* of the Bill seeks to provide for the computation of gross profit in the case of a banking company in accordance with the Second Schedule and in any other case in the manner specified in the Third Schedule.

*Clause 33* of the Bill seeks to provide for the computation of available surplus in respect of any accounting year.

*Clause 34* of the Bill seeks to specify the sums which shall be deducted from the gross profits as prior charges which includes the sums specified in the Fourth Schedule.

*Clause 35* of the Bill seeks to provide for the calculation of direct tax payable by the employer. Such direct tax for any accounting year shall be calculated at the rate applicable to the income of the employer for that year subject to the provisions specified in that clause.

*Clause 36* of the Bill seeks to provide for set on and set off of allocable surplus. It provides as to how the allocable surplus exceeding the amount of maximum bonus payable to the employee shall subject to the limit of 20 per cent. of the total salary or wages of the employee in that accounting year be carried forward for being set on in the succeeding accounting years up to and inclusive of fourth accounting year for the purpose of payment of bonus in the manner illustrated in the First Schedule to the proposed Code. It further provides that where for any accounting year, there is no available surplus or the allocable surplus in respect of that year, falls short of the amount of the minimum bonus payable to the employees and there is no amount or sufficient amount carried forward and set on which could be utilised for the purpose of the minimum bonus, then, such minimum amount or the deficiency shall be carried forward for being set off in the succeeding accounting years and so on up to and inclusive of the fourth accounting year in the manner illustrated in the First Schedule. It also provides that the applicability of the First Schedule in other cases and for the taking into account at first instance the amount of set on or set off carried forward from the earliest accounting year.

*Clause 37* of the Bill seeks to provide for the adjustment of customary or interim bonus payable under the proposed legislation.

*Clause 38* of the Bill seeks to provide for deduction of the amount of loss caused by the employee on account of misconduct from the amount of bonus payable by the employer



to the employee in respect of the concerned accounting year only and the employee shall be entitled to receive the balance, if any.

*Clause 39* of the Bill seeks to provide the time limit for payment of bonus. The bonus payable to an employee shall be paid by crediting in the bank account of the employee by his employer. It also specifies regarding the extension of period for payment of bonus in certain cases and the upper limit of the extension which shall not exceed two years and in case of a dispute for payment at higher rate, the employer shall pay eight and one third per cent. of the wages earned by the employee as per the provisions of the proposed legislation within the time limit.

*Clause 40* of the Bill seeks to provide for the application of the provisions of Chapter IV regarding the payment of bonus to establishments in public sector in certain cases as specified in the said clause.

*Clause 41* of the Bill seeks to provide for the non-applicability of the provisions of Chapter IV regarding the payment of bonus in certain cases which, *inter alia*, include employees employed in Life Insurance Corporation of India, Indian Red Cross Society or any other institution of a like nature including its branches, Reserve Bank of India, etc. It also provides that the provisions regarding the payment of bonus shall apply to such establishments in which twenty or more persons employed or were employed on any day during an accounting year.

*Clause 42* of the Bill seeks to provide for Central Advisory Board to be constituted by the Central Government which shall be tripartite in nature having representatives from employees, employers and independent persons as well as there will be one third representation of women in this Board and the said Board shall advise the Central Government on issues referred to it. It also provides that every State Government shall also constitute a State Advisory Board for advising the State Government, *inter alia*, on fixation or revision of minimum wages, increasing employment opportunities, etc. The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in the clause. One third members of the State Advisory Board shall be women.

*Clause 43* of the Bill seeks to provide the responsibility for payment of various dues of the employees. In case of failure to pay the dues, the concerned company or firm or association or any other person who is the proprietor of the establishment shall be responsible for the payment of dues.

*Clause 44* of the Bill seeks to provide for payment of various undisbursed dues of the employee in case of his death. Such dues will be paid to the persons nominated by the employee and where there is no such nomination or for any reasons such amount cannot be paid to the person nominated, then, the dues shall be deposited with the Authority specified in the rules, who shall deal with the amount in the manner provided in such rules. Where the dues are paid by the employer in accordance with this clause by the employer, then, he shall be discharged of his liability to pay the dues.

*Clause 45* of the Bill seeks to provide for appointment of Authority by the appropriate Government to decide the claim of employees which arises under the provisions of the proposed legislation. The said authority shall have powers to award payment of claim amount along with compensation which may extend up to ten times of the claim amount. Further, if an employer fails to pay the amount of claim and compensation awarded by the Authority, then, the said Authority shall issue a recovery certificate to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee. Any application before the authority for claim referred above may be filed by the employee concerned or Facilitator or by any Trade Union of which the employee is a member.

*Clause 46* of the Bill provides that if a dispute arises between an employer and his employees with respect to the bonus payable under the proposed legislation or the application of this Code, in respect of bonus, to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute under the Industrial Disputes Act, 1947.

*Clause 47* of the Bill seeks to provide that if in any dispute referred to the authority, appellate authority, a Tribunal or an arbitrator, any corporation or a company (other than a banking company) submits to the said authority, appellate authority, a Tribunal or an arbitrator, the documents like balance sheet and profit and loss account duly audited by the Comptroller and Auditor General of India or by auditors duly qualified to act as auditors of companies under Companies Act, 2013, then, such documents shall be presumed to be accurate and it shall not be necessary for the corporation or company to prove the accuracy of such statements. However, when an application is made to the said authority, appellate authority, Tribunal or arbitrator by any employee or a Trade Union being a party to the dispute requiring any clarification to the said statements, then, on order of the authority, appellate authority, Tribunal or arbitrator the concerned corporation or company, as the case may be, shall clarify the same.

*Clause 48* of the Bill seeks to provide for audit of accounts of employers not being corporations or companies. Where an employer fails to get the accounts audited then there is provision for getting the accounts audited by such auditor or auditors as the authority thinks fit and the expenses of and incidental to such audit including the remuneration of auditor or auditors shall be determined by the authority and be paid by the employer. In case of failure of payment, this clause contains the provision for the recovery of such expenses.

*Clause 49* of the Bill makes provisions for appeal against the order of the authority.

*Clause 50* of the Bill seeks to provide for records, returns and notices. The said clause makes provisions for the maintenance of register by the employer containing the details with regard to persons employed, muster roll, wages, and such other details in the manner to be specified in the rules by the appropriate Government. It also provides for the display of a notice on the notice board at a prominent place at the establishment containing the abstract of the proposed legislation, category-wise wage rates of employees, wage period, day or date and time of payment of wages and the name and address of the Facilitator having jurisdiction. There is provision for issue of wage slip. The employer who employs not more than five persons for agriculture or domestic purpose is exempted from the provision but when demanded, he shall produce before the Facilitator the reasonable proof of the payment of wages to the persons employed.

*Clause 51* of the Bill seeks to provide for appointment of Facilitators and their powers. The Facilitator may supply information and advise to employer and workers concerning the most effective means of complying with the provisions of the proposed legislation. The said clause also empowers the Facilitators to inspect the establishment based on inspection scheme.

*Clause 52* of the Bill seeks to provide for cognizance of offences under the provisions of the proposed legislation. The cognizance of the offences shall be taken by the court on a complaint. No court inferior to the Metropolitan Magistrate or Magistrate of the First Class shall try the offences.

*Clause 53* of the Bill seeks to provide penalties for offences. Enhanced penalties shall be imposed on the offender who is again found guilty of similar offence already committed by him, for which he has been convicted. The Facilitator shall, before initiation of prosecution proceedings, give an opportunity to the employer to comply with the provisions of the proposed legislation. The prosecution proceedings shall not be initiated against the employer who complies with the said provisions within the period specified. Such opportunity shall not be accorded to an employer, if the violation of the same nature of the provisions of

proposed legislation is repeated within a period of five years from the date on which the first violation was committed.

*Clause 54* of the Bill seeks to provide for offences by companies. If the offence is committed by a company, every person who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of offence and shall be liable to be proceeded against and punished accordingly. Protection has been provided where offence has been committed without the knowledge or where all due diligence to prevent the commission of the offence has been exercised. The director, manager, secretary or other officer of the company with the consent or connivance of whom the offence has been committed shall also be deemed to be guilty.

*Clause 55* of the Bill seeks to provide for composition of offences. Only the offences for which there is no punishment with imprisonment shall be compounded. The compounding money shall be a sum of fifty per cent. of maximum fine. There is no compounding for a similar offence compounded earlier or for commission of which conviction was made committed for the second time or thereafter within a period of five years.

*Clause 56* of the Bill seeks to provide bar of suits. The matters in which the court shall not entertain the suit, *inter alia*, relate to the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus.

*Clause 57* of the Bill seeks to provide for protection of action taken in good faith by the appropriate Government or any officer of that Government under the provisions of the proposed legislation.

*Clause 58* of the Bill seeks to provide regarding burden of proof. The burden of proving that the dues on account of remuneration or bonus, etc., have been paid shall be on the employer.

*Clause 59* of the Bill seeks to provide that any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under the provisions of the proposed legislation shall be *null* and *void* in so far as it purports to remove or reduce the liability of any person to pay such amount.

*Clause 60* of the Bill seeks to provide for overriding effect in respect of laws, agreements, etc., which are inconsistent with the provisions of the proposed legislation. Such laws, agreements, etc., shall not affect the provisions of the proposed legislation.

*Clause 61* of the Bill seeks to provide for delegation of powers. The appropriate Government may, by notification, delegate the powers exercisable by it in the proposed Code with or without any condition to the officer or authority subordinate to that Government, etc., as may be specified in the notification.

*Clause 62* of the Bill seeks to provide for exemption of employer from liability in certain cases. The employer who is charged with an offence under the provisions of the proposed legislation shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before of the court at the time appointed for hearing the charge and if used he proves that he has, after the commission of the offence has been proved, due diligence to enforce the execution of the provisions of the proposed legislation and the other person committed the offence without his knowledge, consent or connivance, then, that other person shall be convicted of the offence and the employer shall be discharged.

*Clause 63* of the Bill seeks to provide for protection against attachment of assets of employer with Government.

*Clause 64* of the Bill seeks to provide for the powers of the Central Government to give directions to the State Government for carrying into execution of the provisions of the proposed legislation and such directions shall be binding.

*Clause 65* of the Bill seeks to provide that the provisions of the proposed legislation shall not effect the provisions of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and the Coal Mines Provident Fund and Bonus Schemes Act, 1948, or of any scheme made thereunder.

*Clause 66* of the Bill seeks to confer power upon the appropriate Government to make rules. Such powers are of general nature for carrying out the provisions of the proposed legislation and also the matters on which such rules may be made have been specified. There is provision for laying the rules, as the case may be, before the Parliament or the State Legislature.

*Clause 67* of the Bill seeks to confer power upon the Central Government to make provisions published in the Official Gazette and not inconsistent with the provisions of the proposed legislation for removing the difficulty. Such powers shall not be exercised after expiry of a period of two years from the commencement of the proposed legislation and every order published under this clause shall be laid before the each House of Parliament.

*Clause 68* of the Bill seeks to provide for repeal of certain enactments, namely, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976, and saving of things done and action taken thereunder.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill provides that no employer shall pay to any employee wages less than the minimum rate of wages notified by the appropriate Government for the area, establishment or work as may be specified in the notification.

2. Sub-clause (5) of clause 6 of the Bill provides that the appropriate Government may, by notification, fix factors by which the minimum wages so fixed be multiplied for different types of work.

3. Sub-clause (1) of clause 9 of the Bill empowers the Central Government to fix the national minimum wage, by notification. Proviso to the said clause further provides that different national minimum wages may be fixed for different States or different geographical areas.

4. Clause 25 of the Bill exempts the application of the provisions of this Chapter III of the Bill to Government establishments unless the appropriate Government, by notification, applies such provisions to any Government establishment specified in the said notification.

5. Sub-clause (1) of clause 45 of the Bill empowers the appropriate Government to appoint by notification, one or more authorities, not below the rank of a Gazetted officer, to hear and determine the claims which arises under the provisions of this Bill.

6. Sub-clause (1) of clause 49 of the Bill empowers the appropriate Government to appoint appellate authority having jurisdiction to hear appeals preferred by any person aggrieved by an order passed by the authority under sub-clause (2) of clause 45.

7. Sub-clause (1) of clause 51 of the Bill empowers the appropriate Government to appoint Facilitators who shall exercise the powers conferred on them under sub-clause (4) of the said clause throughout the State or such geographical limits assigned to them, in relation to establishments situated in such State or geographical limits, as the case may be.

8. Sub-clause (2) of clause 51 of the Bill empowers the appropriate Government to lay down an inspection scheme by notification, which shall also provide for generation of a web-based inspection schedule.

9. Sub-clause (1) of clause 55 of the Bill empowers the appropriate Government to specify a Gazetted Officer for the purpose of compounding offences in accordance with the provisions of the said clause.

10. Sub-clause (1) of clause 66 empowers the appropriate Government, subject to the condition of previous publication, to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include: (a) the manner of calculating the wages where such rates are fixed by the hour or by the day or by the month under sub-section (4) of section 6; (b) the cases and circumstances in which an employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day under section 10; (c) the extent to which, and subject to such conditions, the provisions of sub-section (1) of section 13 shall apply in relation to certain classes of employees, under sub-section (2) of that section; (d) the manner of fixation of minimum rate of wages by the hour, by the day or by such a longer wage period under section 14; (e) manner of deducting loans made from any fund constituted for the welfare of labour under sub-clause (ii) of clause (f) of sub-section (2) of section 18; (f) the manner of recovery of excess of amount under sub-section (4) of section 18; (g) the authority to provide approval for imposition of fine under sub-section (1) of section 19; (h) the manner of exhibition of the acts and omissions to be specified in the notice under sub-section (2) of section 19; (i) the procedure for the imposition of fines under sub-section (3) of section 19; (j) the form of the register to record all fines and all realisations thereof under sub-section (8) of section 19; (k) the procedure for making deductions for absence from duty under sub-section (2) of section 20; (l) the procedure for

making deductions for damage or loss under sub-section (2) of section 21; (*m*) the form of the register to record all deductions and all realisations thereof under sub-section (3) of section 21; (*n*) conditions for recovery of advance of money given to an employee after the employment began under clause (*b*) of section 23; (*o*) conditions for recovery of advances of wages to an employee not already earned under clause (*c*) of section 23; (*p*) deductions for recovery of loans and the rate of interest payable thereon under section 24; (*q*) manner of regulating the procedure by the Central Advisory Board referred to in sub-section (1) of section 42 and the State Advisory Board referred to in sub-section (4) of the said section including that of the committees and sub-committees constituted by the State Advisory Board under sub-section (10) of section 42; (*r*) the term of members of the Central Advisory Board, the State Advisory Board including the committees and sub-committees constituted by the State Advisory Board under sub-section (11) of section 42; (*s*) the authority and manner of depositing with such authority various undisbursed dues in case of death of employed person under clause (*b*) of sub-section (1) of section 44; (*t*) form of a single application in respect of a number of employees under sub-section (5) of section 45; (*u*) the form for making an appeal to the appellate authority by the aggrieved person under sub-section (1) of section 49; (*v*) the manner of maintenance of a register by the employer to maintain the details of persons employed, muster roll, wages and such other details under sub-section (1) of section 50; (*w*) the manner of issuing wage slips under sub-section (3) of section 50; (*x*) the other powers to be exercised by the Facilitators under sub-section (5) of section 51; (*y*) the manner of composition of offence by a Gazetted Officer specified under sub-section (4) of section 55; and (*z*) any other matter which is required to be or may be specified under the proposed legislation.

11. Sub-clause (3) of clause 66 provides that every rule made by the Central Government is required to be laid before each House of Parliament.

12. Sub-clause (4) of clause 66 provides that every rule made under the said clause is required to be laid before State Legislature.

13. The matter in respect of which rules may be made are matters of procedure or administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

## BILL NO. 165 OF 2017

*A Bill to provide for the resolution of certain categories of financial service providers in distress; the deposit insurance to consumers of certain categories of financial services; designation of systemically important financial institutions; and establishment of a Resolution Corporation for protection of consumers of specified service providers and of public funds for ensuring the stability and resilience of the financial system and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

## CHAPTER I

## PRELIMINARY

Short title and  
commencement.

1. (1) This Act may be called the Financial Resolution and Deposit Insurance Act, 2017.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

Definitions.

2. In this Act, unless the context otherwise requires,—

(1) "Appellate Tribunal" means the National Company Law Appellate Tribunal established under section 410 of the Companies Act, 2013;

(2) "appropriate regulator" means a financial sector regulator specified under the First Schedule, and includes financial sector regulators where the specified service



provider is regulated by more than one financial sector regulator; and in that case such regulators shall, from amongst them, designate a lead regulator by entering into a memorandum of understanding, and in case of any disagreement, the Central Government may designate a lead regulator;

10 of 1949. (3) "banking" means the banking as defined in clause (b) of section 5 of the Banking Regulation Act, 1949;

10 of 1949. (4) "banking institution" means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 and includes—

10 of 1949. (i) a corresponding new bank as defined in clause (da) of section 5 of the Banking Regulation Act, 1949;

(ii) an eligible co-operative bank;

10 of 1949. (iii) a multi-state co-operative bank as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949;

21 of 1976. (iv) a Regional Rural Bank established under sub-section (1) of section 3 of the Regional Rural Banks Act, 1976; and

23 of 1955.  
10 of 1949. (v) the State Bank of India constituted under sub-section (1) of section 3 of the State Bank of India Act, 1955 and its subsidiary banks as defined in clause (nd) of section 5 of the Banking Regulation Act, 1949;

(5) "bridge service provider" means a company limited by shares, created by the Corporation under section 50;

51 of 2007.  
42 of 1956. (6) "central counterparty" means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts, and includes a system provider operating as a central counterparty under the Payment and Settlement Systems Act, 2007 or a clearing corporation under section 8A of the Securities Contract Regulation Act, 1956;

(7) "co-operative bank" means—

61 of 1981. (i) a State co-operative bank as defined in clause (u) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981;

61 of 1981. (ii) a central co-operative bank as defined under clause (d) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981; and

10 of 1949. (iii) a primary co-operative bank as defined in clause (ccv) of section 5 of the Banking Regulation Act, 1949;

(8) "consumer" means a person who has availed or avails or intends to avail of a financial service or had or has or intends to have a right or interest in a financial service;

(9) "Corporation" means the Resolution Corporation established under section 3;

(10) "critical functions" means functions which,—

(i) may have a significant impact on a specified service provider if suddenly discontinued;

(ii) are not easily substitutable;

(iii) are specific to a specified service provider;

(iv) such other functions as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator;

(11) "deposit" means the aggregate of the unpaid balances due to a depositor (other than a foreign Government, the Central Government, a State Government, or a banking institution or a co-operative bank) in respect of all his accounts, by whatever name called, with a banking institution, and includes credit balances in any cash credit account, but does not include—

(i) where a banking institution on the commencement of this Act or an eligible co-operative bank is working under a scheme of compromise or arrangement sanctioned by the competent authority providing for the acceptance of fresh deposits, any amount due to the depositor in respect of his deposit before the date of the coming into force of the scheme to the extent it is not credited after that date under the provisions of the scheme;

(ii) any amount due on account of any deposit with an insured service provider which has been specially exempted in this behalf by the Corporation with the previous approval of the appropriate regulator; or

(iii) any amount due on account of any deposit received outside India, and the expression "depositor" shall be construed accordingly;

(12) "deposit insurance" means the insurance provided by the Corporation to depositors of an insured service provider, under section 29;

(13) "eligible co-operative bank" means a co-operative bank, other than a multi-State co-operative bank, the law for the time being in force, under which such co-operative bank is governed, provides that—

(i) an order for the winding up, or sanctioning a scheme of compromise or arrangement or of amalgamation, of the bank, may be made only with the previous sanction of the Reserve Bank of India;

(ii) an order for the winding up of the bank shall be made if so required by the Reserve Bank of India in the circumstances referred to in section 121;

(iii) if so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interests of the depositors or for securing the proper management of the bank, an order shall be made for the supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator therefor;

(iv) the power exercisable by the Reserve Bank of India under sub-clauses (i), (ii) and (iii) shall only be exercisable by the Corporation in the event of the bank being classified as imminent or critical risk to viability under this Act;

(v) an order for the winding up of the bank or an order sanctioning a scheme of compromise or arrangement or of amalgamation or an order for the supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator thereof made with the previous sanction in writing or on the requisition of the Reserve Bank of India or the Corporation, as the case may be, shall not be liable to be called in question in any manner; and

(vi) the liquidator or the insured service provider or the transferee bank, as the case may be, shall be under an obligation to pay to the Corporation in the circumstances, to the extent and in the manner referred to in section 29;

(14) "financial market infrastructure" includes—

(i) a depository as defined in the Depositories Act, 1996;

22 of 1996.

(ii) a payment systems and the trade repositories defined in the Payment and Settlement Systems Act, 2007;

51 of 2007.

- 42 of 1956. (iii) a recognised stock exchange as defined in the Securities Contracts (Regulation) Act, 1956;
- (iv) a securities settlement system;
- 42 of 1956. (v) a clearing corporation referred to in section 8A of the Securities Contracts (Regulation) Act, 1956; and
- (vi) such other entity,
- as may be notified by the Central Government, but shall not include a settlement system owned or operated by the Reserve Bank of India;
- 31 of 2016. (15) "financial service provider" shall have the same meaning as assigned to it in clause (17) of section 3 of the Insolvency and Bankruptcy Code, 2016;
- 31 of 2016. (16) "information utility" shall have the same meaning as assigned to it in clause (21) of section 3 of the Insolvency and Bankruptcy Code, 2016;
- 4 of 1938. (17) "insurance company" means any person who has obtained the certificate of registration under sub-section (1) of section 3 of the Insurance Act, 1938 and includes the Life Insurance Corporation of India and the General Insurance Corporation of India;
- (18) "insured deposit" means the deposit or any portion thereof, the repayment of which is insured by the Corporation under section 29;
- (19) "insured service provider" means any banking institution, that has obtained deposit insurance under sub-section (3) of section 33;
- (20) "liquidation commencement date" means the date on which the Tribunal passes an order of liquidation under section 63;
- (21) "Member" means a Member of the Corporation appointed under sub-section (2) of section 4;
- (22) "notification" means a notification published in the Official Gazette, and the expression "notified" or "notify" shall be construed accordingly;
- (23) "person", whether resident in India or outside, includes—
- (i) an individual;
  - (ii) a Hindu Undivided Family;
  - (iii) a company;
  - (iv) a trust;
  - (v) a partnership;
  - (vi) a limited liability partnership;
  - (vii) an association of persons or body of individuals, whether incorporated or not;
  - (viii) a body corporate or artificial juridical person not falling within clauses (i) to (vii); and
  - (ix) any agency, office or branch owned or controlled by any of the persons mentioned in clauses (i) to (vii);
- (24) "premium" means the sum payable by an insured service provider for deposit insurance under sub-section (2) of section 22;
- (25) "prescribed" means prescribed by rules made by the Central Government under this Act;

(26) "regulations" means the regulations made by the Corporation or appropriate regulator, as the case may be, under this Act;

(27) "related to a specified service provider" means—

(i) a director or a partner of the specified service provider or a relative of a director or partner of the specified service provider;

(ii) a key managerial personnel of the specified service provider or a relative of a key managerial personnel of the specified service provider;

(iii) a limited liability partnership or a partnership firm in which a director, partner, or manager of the specified service provider or his relative is a partner;

(iv) a private company in which a director, partner or manager of the specified service provider is a director and holds along with his relatives, more than two per cent. of its share capital;

(v) a public company in which a director, partner or manager of the specified service provider is a director and holds along with his relatives, more than two per cent. of its paid-up share capital;

(vi) any body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the specified service provider;

(vii) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of a director, partner or manager of the specified service provider;

(viii) any person on whose advice, directions or instructions, a director, partner or manager of the specified service provider is accustomed to act;

(ix) a body corporate which is a holding, subsidiary or an associate company of the specified service provider, or a subsidiary of a holding company for which the specified service provider is a subsidiary;

(x) any person who controls more than twenty per cent. of voting rights in the specified service provider on account of ownership or a voting agreement;

(xi) any person of which the specified service provider controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(xii) any person who can control the composition of the board of directors or corresponding governing body of the specified service provider;

(xiii) any person who is related to the specified service provider on account of—

(a) participation in policy making processes of the specified service provider;

(b) having more than two directors in common between the specified service provider and such person;

(c) interchange of managerial personnel between the specified service provider and such person; or

(d) provision of essential technical information to, or from, the specified service provider;

(28) "resolution" means the process of resolving a specified service provider in accordance with Chapter VI;

(29) "resolution cost" means the cost incurred by the Corporation for administration and resolution of a specified service provider under this Act, including the costs for the process of liquidation, if applicable, and such other costs, as may be specified by regulations made by the Corporation;

(30) "resolution plan" means a plan for the resolution of a specified service provider prepared in accordance with section 40;

(31) "restoration plan" means a plan for the restoration of a specified service provider prepared in accordance with section 39;

(32) "run-off entity" means an insurance entity which is under resolution in accordance with sub-section (2) of section 48;

18 of 2013.

(33) "Special Court" means a Special Court established or designated as such under sub-section (1) of section 435 of the Companies Act, 2013 having jurisdiction in the matter;

(34) "specified service provider" means a person as specified under the Second Schedule;

(35) "systemically important financial institution" means a person designated as such under section 25 and includes a central counterparty;

18 of 2013.

(36) "Tribunal" means the National Company Law Tribunal established under section 408 of the Companies Act, 2013, having jurisdiction in the place where the registered office of the specified service provider is situated or, in the case of a specified service provider incorporated outside India, where its principal place of business in India is situated;

2 of 1934.  
4 of 1938.  
10 of 1949.  
42 of 1956.  
15 of 1992.  
22 of 1996.  
42 of 1999.  
51 of 2007.  
18 of 2013.  
31 of 2016.

(37) words and expressions used and not defined in this Act but defined in the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Banking Regulation Act, 1949, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Depositories Act, 1996, the Foreign Exchange Management Act, 1999, the Payment and Settlement Systems Act, 2007, the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016, shall have the meanings respectively assigned to them in those Acts.

## CHAPTER II

### RESOLUTION CORPORATION

**3.** (1) The Central Government shall, by notification, establish for the purposes of this Act, a Corporation by the name of the Resolution Corporation.

Establishment  
of Corpora-  
tion.

(2) The Corporation shall be a body corporate, by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property, both movable and immovable, and to contract, and shall, by the said name sue or be sued.

(3) The head office of the Corporation shall be at Mumbai.

(4) The Corporation may establish its offices at other places in India.

**4.** (1) The general superintendence, direction and management of the affairs of the Corporation shall vest in the Members of the Corporation, which may exercise all powers and do all acts and things which may be exercised by the Corporation.

Management  
of Corpora-  
tion.

(2) The Corporation shall consist of the following Members, to be appointed by the Central Government, namely:—

(a) a Chairperson;

(b) one officer of the Government of India in the Ministry of Finance, *ex officio*;

(c) one Member to be nominated by the Reserve Bank of India, *ex officio*;

(d) one Member to be nominated by the Securities and Exchange Board of India, *ex officio*;

(e) one Member to be nominated by the Insurance Regulatory and Development Authority of India, *ex officio*;

(f) one Member to be nominated by the Pension Fund Regulatory and Development Authority of India, *ex officio*;

(g) such number of whole-time Members, not exceeding three, as may be decided by the Central Government; and

(h) two independent Members.

(3) The Chairperson and other Members shall be persons of ability, integrity and standing, who have expertise in finance, economics, risk management, or regulation, supervision, resolution of financial firms, law or public policy in the area of financial services.

(4) The Chairperson and other Members, other than an *ex officio* Member, shall be appointed after obtaining the recommendation of a selection committee consisting of—

(a) Cabinet Secretary—chairperson;

(b) a Secretary to the Government of India to be nominated by the Central Government — member;

(c) three experts of repute from the field of finance, law, management, insolvency and related subjects, to be nominated by the Central Government—members.

(5) The term of office of the Chairperson and other Members (other than *ex officio* Members) shall be five years and shall be eligible for reappointment:

Provided that the Chairperson or a Member shall not hold office after he has attained the age of sixty-five years:

Provided further that an independent Member appointed under clause (h) of sub-section (2) shall not hold office after he has attained the age of seventy years.

(6) A person shall not be qualified for appointment as the Chairperson or as a Member, other than an *ex officio* Member, if at the time of appointment, such person,—

(a) has been appointed twice as a Member;

(b) shall not be able to serve a term of at least three years before reaching the age of retirement; or

(c) holds or has held, in three years preceding such appointment, any position which is likely to conflict with his duties as a Member.

(7) The salaries and allowances payable to, and other terms and conditions of service of the Chairperson and other Members (other than *ex officio* Members) shall be such as may be prescribed.

Restriction  
on future  
employment  
of Members.

**5.** The Chairperson and other Members shall not, for a period of two years from the date on which they cease to hold office as such, except with the previous approval of the Central Government, accept—

(a) any employment under the Central Government or any State Government; or

(b) any appointment under a specified service provider.

Removal of  
Members.

**6. (1)** The Central Government may remove the Chairperson or a Member from office, if he—

(a) has been adjudged as insolvent;

(b) has become physically or mentally incapable of acting as a Member;

(c) has been convicted of an offence, which in the opinion of the Central Government involves moral turpitude;

(d) has so abused his position as to render his continuation in office detrimental to the public interest; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member.

(2) No Member shall be removed under this section unless he has been given a reasonable opportunity of being heard in the matter.

**7.** The Chairperson shall have the powers of general superintendence and control in respect of all administrative matters of the Corporation and may also exercise such other powers, except the powers exercisable under section 12, as may be delegated to him by the Corporation.

Powers of  
Chairperson.

**8. (1)** The Corporation shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the Corporation.

Meetings of  
Corporation.

(2) If, for any reason, the Chairperson is unable to attend any meeting of the Corporation, any other Member chosen by the Members present at the meeting, shall preside at the meeting.

(3) All questions which come up before a meeting of the Corporation shall be decided by a majority of votes of Members present and voting and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a casting vote.

**9.** Any Member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Corporation, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Corporation, and the Member shall not take any part in any deliberation or decision of the Corporation with respect to that matter.

Members not  
to participate  
in meetings in  
certain cases.

**10.** No act or proceeding of the Corporation, shall be invalid merely by reason of—

(a) any vacancy in or any defect in the constitution of the Corporation;

(b) any defect in the appointment of a person as a Member ; or

(c) any irregularity in the procedure of the Corporation not affecting the merits of the case.

Vacancies,  
etc., not to  
invalidate  
proceedings.

**11. (1)** The Corporation may appoint such officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

Power to  
appoint  
officers and  
employees.

(2) The salaries and allowances payable to, and other terms and conditions of service of such officers and employees, shall be specified by regulations made by the Corporation.

(3) Without prejudice to sub-sections (1) and (2), it shall be lawful for the Corporation to utilise and for the appropriate regulator to make available, the services of such employees of the appropriate regulator on such terms and conditions as may be agreed upon between the Corporation and the appropriate regulator.

**12.** The Corporation may make regulations consistent with the provisions of this Act and the rules made thereunder for authorising its officers to carry out any functions for the purposes of this Act.

Functions of  
officers.



Powers and  
functions of  
Corporation.

**13.** (1) Subject to the provisions of this Act, the Corporation shall have the following powers and functions, namely:—

- (a) provide deposit insurance to banking institutions;
- (b) specify the criteria for classification of a specified service provider into one of the categories of risk to viability;
- (c) act as an administrator for the specified service provider which has been classified in the category of critical risk to viability;
- (d) exercise powers in relation to certain termination rights in respect of specified service providers;
- (e) resolve a specified service provider which has been classified in the category of critical risk to viability;
- (f) act as a liquidator for a specified service provider against which an order of liquidation has been made;
- (g) any other powers and functions as may be prescribed.

(2) Notwithstanding anything in any other law for the time being in force, while exercising the powers under this Act, the Corporation shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

- (a) the discovery and production of books of account and other documents, at such place and such time as may be specified by regulations made by the Corporation;
- (b) summoning and enforcing the attendance of persons related to the specified service provider and examining them on oath;
- (c) inspection of any books, registers and other documents of any person related to the specified service provider at any place;
- (d) issuing of commissions for the examination of witnesses or documents;
- (e) sharing of information or ordering disclosures as may be specified by regulations made by the Corporation; and
- (f) any other matter as may be prescribed.

Powers of  
investigation.

**14.** (1) Where the Corporation has reasonable grounds to believe that—

- (a) the activities of a specified service provider are being conducted in a manner detrimental to the interest of the consumers; or
- (b) any person or entity related to the specified service provider has violated any of the provisions of this Act or the rules or regulations made or any directions issued thereunder,

it may, by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) mentioned in the order, to investigate the affairs of such specified service provider or persons or entity related to the specified service provider and to report its finding thereon to the Corporation.

(2) Without prejudice to the provisions in sections 210, 213, 214, 215, 217, 219, 220 and 223 of the Companies Act, 2013, it shall be the duty of every manager, managing director, officer and other employee of the company, in case of a company functioning as a specified service provider and every person related to a specified service provider, to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, such books, registers, other documents and records of, or relating to the specified service provider, which are in their custody or control as specified by a notice, by the Investigating Authority. 18 of 2013.

18 of 1891.

(3) Subject to the Banker's Book of Evidence Act, 1891, the Investigating Authority may require any person related to the specified service provider in any manner to furnish such information to, or produce such books, or other documents, or records before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, registers, other documents and records is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and records produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to the specified service provider or any person or entity related to the specified service provider by whom or on whose behalf the books, registers, other documents and records are produced:

Provided that the Investigating Authority may call for any book, register, other document or record if they are required again:

Provided further that if the person on whose behalf the books, registers, other documents and records are produced requires certified copies of the books, registers, other documents and records produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and records to such person or entity on whose behalf the books, registers, other documents and records were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath any person or entity related to the specified service provider in any manner, in relation to the affairs of the specified service provider and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him and the specified service provider.

(7) Upon the conclusion of an investigation under this section, the Investigating Authority shall prepare a report of such investigation, a copy of which shall be forwarded to the appropriate regulator within such time as may be specified by regulations made by the Corporation.

**15. (1)** Without prejudice to the provisions in sections 13 and 14, the Corporation may authorise any of its Members to carry out any of the following measures, namely:—

Powers of  
pending  
investigation.

(a) restrain a specified service provider from carrying out such business activities as it thinks fit;

(b) restrain any office bearer of a specified service provider from acting as such;

(c) impound and retain the proceeds in respect of any activity of a specified service provider which is under investigation;

(d) provisionally attach, by an order, for a period not exceeding thirty days, any assets of a specified service provider or any person related to a specified service provider, where it has reason to believe that such specified service provider or any person related to specified service provider has violated any of the provisions of this Act or the rules or regulations made thereunder:

Provided that only such assets, which relate to the proceeds involved in such violation shall be attached:

Provided further that a Member shall, before or after, passing the order under this clause, give to the specified service provider or persons concerned a reasonable opportunity of being heard;

(e) direct a specified service provider or any person related to such specified service provider in any manner not to dispose of or alienate an asset forming part of any activity which is under investigation.

(2) The Member authorised under sub-section (1) shall, within fifteen days of the order under clause (d) of sub-section (1), make an application supported by an affidavit stating the grounds on which it has issued the said order, to the District Judge having jurisdiction, for confirmation of the provisional order of attachment.

(3) Upon receipt of the application under sub-section (2), the District Judge having jurisdiction shall, within thirty days of the application and after considering the affidavit and providing a summary hearing to the concerned specified service provider, by order in writing, confirm or revoke the order.

Search and seizure.

**16.** (1) Where the Corporation, in consequence of information in its possession, has reason to believe that—

(a) any person related to a specified service provider required to produce, or cause to be produced, any books, accounts or other documents in his custody or control has omitted or failed to produce, or cause to be produced, such books, accounts or other documents; or

(b) any person to whom a requisition to produce any books, accounts or other documents has been or might be issued will not, or would not, produce or cause to be produced, any books, accounts or other documents which shall be useful for, or relevant to, an investigation under this Act; or

(c) a contravention of any provision of this Act has been committed or is likely to be committed by a specified service provider; or

(d) any claim which is due to be settled by the specified service provider, has been or is likely to be rejected or settled at an amount higher than a reasonable amount; or

(e) any claim which is due to be settled by a specified service provider, has been or is likely to be rejected or settled at an amount lower than a reasonable amount; or

(f) any books, accounts, papers, receipts, vouchers, survey reports or other documents, belonging to a specified service provider are likely to be tampered with, falsified or forged,

it may authorise an officer (hereinafter referred as the authorised officer) to—

(i) enter and search any building or place where he has reason to suspect that such books, accounts or other documents are kept;

(ii) break open the lock of any box, locker, safe, almirah or other receptacle for the purposes of clause (a) where the keys thereof are not available;

(iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom.

(2) The authorised officer may requisition the services of any police officer to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such police officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with the provisions of this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or

other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Corporation for such retention is obtained:

Provided that the Corporation shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports or other documents for a period exceeding thirty days after all the proceedings under this Act, for which the books, accounts, papers, receipts, vouchers, reports, or other documents are relevant, are completed.

(6) The person from whose custody the books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by the authorised officer in this behalf at such place and time as the authorised officer may appoint in this behalf.

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports or other documents seized under sub-section (1) objects for any reason to the approval given by the Corporation under sub-section (5), such person may make an application to the Tribunal stating therein the reason for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, reports or other documents.

(8) On receipt of the application under sub-section (7), the Tribunal may, after giving the applicant a reasonable opportunity of being heard, pass such order as it thinks fit.

2 of 1974.

(9) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).

**17.** Where any officer or agent of the Corporation or of the appropriate regulator, duly authorised in writing by the Corporation or the appropriate regulator, as the case may be, thinks necessary so to do for ensuring the compliance with the provisions of this Act, he may—

Power to enter premises and inspect, etc.

(a) enter any premises where a specified service provider carries on business;

(b) inspect any equipment, including any computer system or other documents at such premises; and

(c) call upon any employee of such specified service provider or any other person working in such premises to furnish such information or documents as may be required by such officer.

**18.** Any power exercisable under section 14, 15, 16 or section 17, may, notwithstanding anything therein, be exercised in respect of a specified service provider only after such specified service provider has been classified in the category of —

Conditions on exercise of powers.

(a) imminent risk to viability under section 43; or

(b) critical risk to viability under section 45.

**19.** The Corporation may, for the efficient discharge of its functions, constitute such committees, as it may deem fit, consisting of a chairperson and such other members as may be specified by regulations made by the Corporation.

Constitution of committees.

**20.** (1) The Corporation and the appropriate regulators shall hold due consultations with all relevant stakeholders before making any regulations under this Act.

Consultation and transparency.

(2) The Corporation shall ensure transparency in the discharge of its powers and functions, subject to the provisions of this Act.

Funds of  
Corporation.

**21.** (1) The Corporation shall constitute the following funds for the purposes of this Act, namely:—

(a) a fund for deposit insurance provided by the Corporation to the insured service providers, called the Corporation Insurance Fund;

(b) a fund for meeting the expenses of carrying out resolution of specified service providers, called the Corporation Resolution Fund; and

(c) a fund for all other functions of the Corporation called the Corporation General Fund.

(2) The Funds under this section shall be credited in the following manner—

(a) premium for deposit insurance collected from insured service providers, in the Corporation Insurance Fund;

(b) fees for resolution collected from the specified service providers in the Corporation Resolution Fund; and

(c) all other fees in the Corporation General Fund.

(3) The Corporation shall be prudent in investing the moneys in the Corporation Insurance Fund in such manner as may be specified by regulations made by the Corporation.

(4) The Corporation may invest the moneys in the other funds in a prudent manner.

(5) Any income from any investment made by the Corporation under sub-sections (3) and (4) shall be remitted to the respective fund from which such investment was made.

(6) The Corporation shall utilise the amounts in each fund only for the purpose for which the fund was constituted.

Fees, etc., to  
be paid to  
Corporation.

**22.** (1) Every specified service provider shall pay to the Corporation, such amounts at such intervals and in such manner as may be specified by regulations made by the Corporation, towards—

(a) fees for resolution; and

(b) fees for administrative expenses of the Corporation including the fees charged under section 33.

(2) Every insured service provider shall additionally pay such amounts, at such intervals and in such manner, as premium for deposit insurance, as may be specified by regulations made by the Corporation.

(3) Without prejudice to the generality of this section, the Corporation shall specify by regulations—

(a) the manner of assessment of fees and premium payable by a specified service provider or insured service provider as applicable, including different rates for different categories of specified service providers and insured service providers, based on considerations which may include the risk profile of the specified service provider, amongst others;

(b) the information which a specified service provider and an insured service provider shall provide to the Corporation for calculating fees or premium as applicable.

Grants by  
Central  
Government.

**23.** The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Corporation grants or loans of such sums of money, on such terms, as the Central Government may think fit, for being utilised for the purposes of this Act:

Provided that the Central Government may require such grants to be deposited in such fund of the Corporation as the Central Government may direct.

24. (1) The Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Corporation shall be audited by the Comptroller and Auditor-General of India at such intervals as may be prescribed and any expenditure incurred by him in connection with such audit shall be reimbursed to him by the Corporation.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Corporation.

(4) The accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by the Comptroller and Auditor-General of India in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

### CHAPTER III

#### SYSTEMICALLY IMPORTANT FINANCIAL INSTITUTIONS

25. (1) The Central Government may, in consultation with the appropriate regulator, by an order published in the Official Gazette, designate a financial service provider, which meets such criteria as may be prescribed by the Central Government in consultation with the appropriate regulator, as a systemically important financial institution:

Designation of systemically important financial institution.

Provided that no financial service provider shall be designated as a systemically important financial institution unless it has been given an opportunity of being heard:

Provided further that any person designated as Domestic Systemically Important Bank by the Reserve Bank of India shall be deemed to be a systemically important financial institution for the purposes of this Act, for a period of six months with effect from such date as the Central Government may, by notification, specify.

(2) The Central Government may, while designating a systemically important financial institution under sub-section (1), direct that such holding, subsidiary or associate company, or any other body corporate related to, or associated with, the financial service provider, as specified in the order shall, jointly with such financial service provider or separately, be deemed to be a systemically important financial institution, if such holding, subsidiary or associate company or any other body corporate meets with the criteria specified under sub-section (1).

(3) The Central Government shall, while prescribing criteria for designation of systemically important financial institution under sub-section (1), take into consideration the following attributes of a financial service provider, namely:—

(a) size;

(b) complexity;

(c) nature and volume of transactions with other financial service providers;

(d) interconnectedness with other financial service providers;

(e) nature of services provided by the financial service providers and whether they are difficult to substitute; and

(f) such other matters as may be prescribed.



(4) A person designated as a systemically important financial institution under sub-section (1) or sub-section (2) may, within thirty days of the order of such designation, prefer an appeal to the Tribunal on the ground of non-compliance with the procedural requirements of this section before such designation.

Consequence of designation.

**26.** (1) If a person is designated as a systemically important financial institution, then, notwithstanding whether or not such person is a specified service provider, the provisions of this Act applicable to a specified service provider, shall apply to such systemically important financial institution as if it were a specified service provider.

(2) Every systemically important financial institution shall, within a period of ninety days from the publication of the order of designation under section 25, submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation, in accordance with the provisions of section 38.

(3) Every systemically important financial institution shall provide such information to the Corporation at such intervals and in such manner as may be specified by regulations made by the Corporation, to monitor the safety, soundness and solvency of such systemically important financial institution.

(4) The Corporation and the appropriate regulator may, based on the information received from any systemically important financial institution or otherwise and for reasons to be recorded in writing, jointly inspect such systemically important financial institution in such manner as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.

(5) Subject to the provisions of this Act, the regulation and supervision of systemically important financial institutions shall continue to be governed by the appropriate regulator with which the systemically important financial institution is registered.

De-designation of systemically important financial institution.

**27.** Where a systemically important financial institution ceases to meet the criteria specified under sub-section (1) of section 25, the Central Government may, for reasons to be recorded in writing, de-designate such systemically important financial institution.

Delegation of powers by Central Government.

**28.** The Central Government may, by an order published in the Official Gazette, delegate any of its powers exercisable under this Chapter (except the power to make rules or issue notifications), to be exercisable by such person or committee as may be specified in the order.

## CHAPTER IV

### LIABILITY OF CORPORATION TO INSURED DEPOSITORS OF INSURED SERVICE PROVIDERS

Liability of Corporation to insured depositors of insured service providers.

**29.** (1) The Corporation shall, in consultation with the appropriate regulator, specify the total amount payable by the Corporation with respect to any one depositor, as to his deposit insured under this Act, in the same capacity and in the same right.

(2) The Corporation Insurance Fund shall be utilised by the Corporation—

(a) for payment of the specified amount or amount due, whichever is less, to a depositor of an insured service provider in respect of his deposit, in case of its liquidation;

(b) for payment under—

(i) a scheme of compromise or arrangement or amalgamation of an eligible co-operative bank, in accordance with the law governing such eligible co-operative bank; or

(ii) a scheme of resolution sanctioned under section 48, other than resolution through bail-in under section 52, in respect of any other insured service provider:



Provided that where the scheme referred to in clause (b) provides for each depositor being paid or credited with, on the date the scheme comes into force, an amount which is less than the original amount and also the specified amount, in which case, the Corporation shall be liable to pay to every such depositor in accordance with the provisions of section 29, an amount equivalent to the difference between the amount so paid or credited and the original amount, or the difference between the amount so paid or credited and the specified amount, whichever is less:

Provided further that where the scheme also provides that any payment made to a depositor before the coming into force of the scheme shall be reckoned towards the payment due to him under that scheme, the scheme shall be deemed to have provided for that payment being made on the date of its coming into force.

*Explanation.*—In this sub-section,—

(i) "original amount" in relation to a depositor means the total amount due by the insured service provider immediately before the date of coming into force of the scheme of compromise or arrangement or amalgamation or the scheme of resolution, as the case may be, to the depositor in respect of his deposit in the insured service provider in the same capacity and in the same right:

Provided that where under the first proviso to sub-section (2), the scheme is deemed to have provided for any payment being made on the date of its coming into force, the amount of such payment shall be included in calculating the original amount;

(ii) "specified amount" means the amount specified by the Corporation under sub-section (1).

(3) Where, during resolution of an insured service provider, the Corporation determines that the readily realisable assets of the insured service provider shall not be sufficient to pay for the insured deposits of the insured service provider, the Corporation may, after inviting offers from other insured service providers, prepare a scheme which involves—

(i) any insured service provider taking over the liabilities of the insured service provider in resolution to the extent of the insured liabilities to the depositors;

(ii) transferring the deposits of the insured depositors to the other insured service provider to the extent of the insured amount;

(iii) transferring such readily realisable assets of the insured service provider in resolution as appropriate;

(iv) making such payments, as mutually agreed by the Corporation and the other insured service provider, out of the Corporation Insurance Fund for taking over the insured deposits; and

(v) liquidating an insured service provider, or forming a bridge institution under this Act with such assets which are not readily realisable including all remaining liabilities of the insured service provider in resolution.

(4) Where a scheme of resolution is prepared under section 48, the Corporation may make such payments out of the Corporation Insurance Fund to the other insured service provider, subject to the following conditions, namely:—

(a) the amount transferred under such scheme shall not be more than the estimated liabilities of the Corporation Insurance Fund, had the insured service provider in resolution been liquidated; and

(b) the amount is transferred to an entity which is not related to the insured service provider in resolution.

(5) Where the Corporation resolves an insured service provider, or resolves a bridge institution under section 50, notwithstanding anything in section 80, the Corporation's claim over the amount paid out of the Corporation Insurance Fund under sub-section (2) shall have priority over other claims.

(6) For the purposes of this section, the amount of a deposit shall be determined after deducting any ascertained sum of money which the insured service provider may be legally entitled to claim by way of set off against the depositor in the same capacity and in the same right.

(7) The Corporation shall, within ninety days from the date of utilisation of any amount from the Corporation Insurance Fund, submit a report to the Central Government in such form and manner as may be prescribed.

(8) The Corporation shall, for the purposes of this section, by regulations specify—

(a) the process of determining readily realisable assets of an insured service provider in resolution;

(b) the process of inviting offers from other insured service providers and the time and manner of making offers by other insured service providers; and

(c) the process of estimation of liabilities to the Corporation Insurance Fund.

(9) For the purposes of this section,—

(a) "readily realisable assets" means the assets of the insured service provider in resolution which may be sold or transferred at a reasonable market value within a short span of time usually not exceeding six months; and

(b) a party is related to an insured service provider if it owns more than the specified percentage of the equity of the insured service provider or has a common shareholder which owns more than a specified percentage of equity and such other persons as may be specified, by regulations made by the Corporation.

Manner of  
payment by  
Corporation.

**30.** (1) Where under any scheme of resolution under clause (b) of sub-section (2) of section 29, involving any insured service provider with any other banking institution (hereafter referred to as "the transferee insured service provider") the Corporation has become liable to pay to depositors of the insured service provider under section 29, the transferee insured service provider shall, immediately and in any case not later than one month from the date on which such scheme takes effect, furnish to the Corporation, a list showing separately, deposits in respect of each depositor and the amounts to be set off and also the amount paid or credited or deemed to have been paid under the scheme, in such form and manner as may be specified by regulations, made by the Corporation duly certified by the chief executive officer of the transferee insured service provider.

(2) The Corporation shall, before the expiry of two months from the receipt of the list under sub-section (1), pay the amount payable under section 29 directly to the depositor or to the transferee insured service provider or the insured service provider for being credited in his account.

(3) The manner of payment by the Corporation in case of liquidation shall be as laid down in section 72.

Discharge of  
liability of  
Corporation.

**31.** Any amount paid by the Corporation under section 29 in respect of a deposit shall, to the extent of the amount paid, discharge the Corporation from its liability in respect of that deposit.

Provision for  
unpaid  
amounts.

**32.** (1) Where any depositor, to whom any payment is to be made in accordance with the provisions of section 29 or section 73, cannot be found or is not readily traceable, adequate provisions shall be made by the Corporation for such payment and such amount shall be accounted for separately in its books.

(2) The amount under sub-section (1) shall be payable to a *bona fide* depositor in such manner as may be specified by regulations made by the Corporation.

## CHAPTER V

### REGISTRATION

**33.** (1) On the date of the commencement of this Act, every specified service provider under the Second Schedule shall be deemed to be registered under this Act:

Registration  
of specified  
service  
provider.

Provided that where a holding company of such specified service provider or a non-regulated operational entity within a financial group or conglomerate of a specified service provider is classified into a category of risk to viability under sub-section (2) of section 36, such holding company or the non-regulated operational entity within a financial group or conglomerate of the specified service provider, shall be deemed to be registered from the date of such classification.

(2) Where the appropriate regulator issues a license, authorisation or permission by virtue of which a person is categorised as a specified service provider, such person shall be deemed to be registered under this Act.

(3) Every banking institution shall, on the grant of a banking licence by the appropriate regulator, be deemed to be registered as an insured service provider for obtaining deposit insurance under this Act:

47 of 1961.

Provided that a banking institution registered under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 shall, as on the commencement of this Act, be deemed to be registered as an insured service provider under this Act.

(4) The Corporation shall maintain a register with such details and information, of each specified service provider as may be specified by regulations made by the Corporation, which shall be available for inspection by any person subject to such conditions and payment of such fees as may be specified by regulations made by the Corporation.

(5) For the purposes of sub-section (1) and sub-section (2), the appropriate regulator shall, within fifteen days of the commencement of this Act or the issuance of a license, authorisation or permission, as the case may be, provide to the Corporation such information as may be specified by regulations made by the Corporation relevant for the maintenance of the register under this section.

**34.** (1) Notwithstanding the withdrawal or cancellation by the appropriate regulator of a specified service provider to carry on business, such entity shall be deemed to be a specified service provider for the purposes of this Act:

Withdrawal or  
cancellation  
of registration  
of specified  
service  
provider.

Provided that the registration of an insured service provider under this Act shall stand cancelled in the following circumstances, namely:—

(a) the insured service provider has been prohibited permanently from receiving fresh deposits;

10 of 1949.

(b) the insured service provider has ceased to be a banking company or a co-operative bank, as the case may be, within the meaning of sub-section (2) of section 36A of the Banking Regulation Act, 1949, or has converted itself into a non-banking institution;

10 of 1949.

(c) the insured service provider has been informed by notice in writing by the Reserve Bank of India that its licence has been cancelled under section 22 of the Banking Regulation Act, 1949 or that a licence under that section cannot be granted to it;

(d) the insured service provider has transferred all its deposit liabilities in India to any other institution;

(e) a liquidator has been appointed in respect of such insured service provider;

(f) the insured service provider has been amalgamated with any other insured service provider;

(g) where the insured service provider is an eligible co-operative bank, if it ceases to be so under the law governing such insured service provider; or

(h) the insured service provider has been ordered to be liquidated.

(2) The Corporation may, in consultation with the appropriate regulator, cancel the registration of an insured service provider under this Act and classify it to be at such risk to viability as may be specified by regulations made by the Corporation if it fails to pay the premium under section 22 for three consecutive periods:

Provided that no registration shall be cancelled without giving one month's notice in writing to the insured service provider calling upon it to pay the amount in default.

(3) The Corporation may, in consultation with the appropriate regulator, restore the registration of an insured service provider whose registration has been cancelled under sub-section (2), if the insured service provider requests the Corporation to restore the registration and pays all the amounts due by way of premia from the date of default till the date of payment together with interest due thereon, on the date of payment:

Provided that the Corporation shall not restore the registration of an insured service provider unless it is satisfied, on an inspection or otherwise that such insured service provider is eligible to be registered as an insured service provider.

Withdrawal or cancellation of registration not to affect liability to pay premia, etc.

**35.** (1) Where the registration of a specified service provider or an insured service provider has been withdrawn or cancelled, it shall not—

(i) entitle such specified service provider or insured service provider, as the case may be, to any refund for any fees or premia paid to the Corporation under this Act; or

(ii) affect the liability of such specified service provider or insured service provider, as the case may be, for payment of premium or fees for the period before such withdrawal and of any interest due under sub-section (2).

(2) If a specified service provider or an insured specified service provider makes any default in payment of any amount of fees or premium, it shall, for the period of such default, be liable to pay to the Corporation interest on such amount at such rate not exceeding eight per cent. over and above the bank rate, as may be specified by regulations made by the Corporation.

*Explanation.*— For the purposes of this sub-section, "bank rate" shall have the same meaning as assigned to it in section 49 of the Reserve Bank of India Act, 1934.

2 of 1934.

## CHAPTER VI

### RESOLUTION OF SPECIFIED SERVICE PROVIDER

Classification of specified service providers into categories of risk to viability.

**36.** (1) The appropriate regulator or, as the case may be, the Corporation may, by an order in writing, classify a specified service provider which meets the criteria laid down under sub-section (5), into any one of the categories of risk to viability:

Provided that the Corporation shall have no power to classify a specified service provider into the category of low or moderate risk to viability.

(2) The appropriate regulator or, as the case may be, the Corporation, shall, while classifying a specified service provider under this sub-section, if it considers expedient or necessary for the purposes of the resolution of the specified service provider under this Act, determine as to whether a holding company of such specified service provider or a

non-regulated operational entity within a financial group or conglomerate of a specified service provider is to be so classified, and if it so determines,—

(a) it shall classify such holding company or a non-regulated operational entity within a financial group or conglomerate; and

(b) on such classification, the holding company or a non-regulated operational entity within a financial group or conglomerate of a specified service provider, shall be deemed to be a specified service provider.

(3) A copy of the order of classification under sub-section (1) or sub-section (2) shall be forwarded to the Corporation or the appropriate regulator, as the case may be, within fifteen days of such order.

(4) For the purposes of classification under sub-section (1) of section 36, the appropriate regulator, may carry out investigation, inquiry or inspection, at such intervals as may be specified by regulations made by it.

(5) The Corporation shall, in consultation with the appropriate regulator, specify by regulations, objective criteria for classification of a specified service provider into any one of the following categories of risk to viability, namely:—

(a) low, where the probability of failure of a specified service provider is substantially below the acceptable probability of failure;

(b) moderate, where the probability of failure of a specified service provider is marginally below or equal to acceptable probability of failure;

(c) material, where the probability of failure of a specified service provider is marginally above acceptable probability of failure;

(d) imminent, where the probability of failure of a specified service provider is substantially above the acceptable probability of failure;

(e) critical, where the probability of failure of a specified service provider is substantially above the acceptable probability of failure, and the specified service provider is on the verge of failing to meet its obligations to its consumers:

Provided that the Corporation may specify different criteria for different categories of specified service provider.

(6) While making any regulations under sub-section (5), the Corporation shall take into account the following attributes of a specified service provider, namely:—

(a) adequacy of capital, assets and liability;

(b) asset quality;

(c) capability of management;

(d) earnings sufficiency;

(e) leverage ratio;

(f) liquidity of the specified service provider;

(g) sensitivity of the specified service provider to adverse market conditions;

(h) compliance with applicable laws;

(i) risk of failure of a holding company of a specified service provider or a connected body corporate in India or abroad; and

(j) any other attributes as the Corporation deems necessary:

Provided that for the purposes of classifying a specified service provider in the category of critical risk to viability, the regulations shall take into account the period for which the specified service provider has been in the category of imminent risk to viability, if applicable:

Provided further that the Corporation may, in consultation with the appropriate regulator, specify additional criteria in respect of risk to viability of a specified service provider which is operating in India as a branch office of a body corporate incorporated outside India.

(7) The classification of a specified service provider by the Corporation or the appropriate regulator, as the case may be, shall be final and the specified service provider shall comply with the requirements of such classification.

(8) The classification of a specified service provider into any of the categories of risk to viability except the category of critical risk to viability under section 45, shall be kept confidential by the appropriate regulator, the Corporation and by all relevant parties.

Consultation  
in case of  
difference of  
opinion over  
classification.

**37.** (1) Where a specified service provider has been classified in the category of material risk to viability by the appropriate regulator, and the Corporation has a difference of opinion over such classification, the Corporation shall record its reasons in writing and convey the same to the appropriate regulator.

(2) Where the Corporation has conveyed a contrary opinion over the assessment under sub-section (1), there shall be a consultation of not more than fifteen days between the Corporation and the appropriate regulator with a view to arriving at a consensus over the assessment:

Provided that if after such consultation, the Corporation continues to hold a different view regarding the assessment, it may decide to conduct an independent inspection to confirm its own view regarding the risk to viability, and the appropriate regulator may be present during such inspection, if it deems necessary.

(3) The Corporation shall, after conducting the inspection under sub-section (2), forward a copy of the inspection report along with its findings to the appropriate regulator for its comments.

(4) The Corporation may, after considering the comments of the appropriate regulator, make a determination of the imminent or critical risk to viability of the specified service provider except the classification of a central counterparty referred to in sub-section (4) of section 43 and such determination shall be final.

(5) The Corporation may request such information relating to the business of the specified service provider as may be specified by regulations made by the Corporation, for any specified service provider classified in the category of material, imminent or critical risk to viability.

## CHAPTER VII

### RESTORATION PLAN AND RESOLUTION PLAN

Submission of  
plans.

**38.** (1) Any specified service provider, classified in the category of material or imminent risk to viability shall submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation within ninety days of such classification under section 36:

Provided that the Corporation may specify a shorter period if in its opinion, it is necessary so to do.

(2) Notwithstanding anything in sub-section (1), every systemically important financial institution shall submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation within ninety days of its designation under section 25.

(3) A copy of every restoration plan submitted to the appropriate regulator shall be submitted to the Corporation, and a copy of every resolution plan submitted to the Corporation shall be submitted to the appropriate regulator, within fifteen days of its receipt by the appropriate regulator or the Corporation, as the case may be.



**39.** (1) Every restoration plan shall contain the following, namely:—

Contents of  
restoration  
plan.

(a) distinct identification of the assets and liabilities of the specified service provider;

(b) any contingent liabilities of the specified service provider;

(c) steps which the specified service provider shall take to qualify for classification in the category of at least moderate risk to viability and how such steps may result in such classification;

(d) the period within which the entire restoration plan and each step of the plan will be executed; and

(e) any other relevant information specified by regulations made by the appropriate regulator.

(2) Where a systemically important financial institution is classified in the category of low or moderate risk to viability, it shall submit the information required under this sub-section assuming that it is classified in the category of material or imminent risk to viability.

(3) For the purposes of sub-section (1), the appropriate regulator shall, by regulations, specify the form and manner in which the restoration plan is required to be made.

(4) The appropriate regulator may require a specified service provider to provide any information as may be necessary to determine the efficacy of a restoration plan.

**40.** (1) Every resolution plan shall contain the following, namely:—

Contents of  
resolution  
plan.

(a) distinct identification of the assets and liabilities of the specified service provider;

(b) any contingent liabilities of the specified service provider;

(c) distinct identification of critical functions of the specified service provider;

(d) direct or indirect access to financial market infrastructure services; and

(e) strategy plans to exit the resolution process which may provide for the consideration of legal or regulatory requirements as may be required by the Corporation to sell or transfer the assets and liabilities of the specified service provider, or change its ownership; and

(f) other relevant information.

(2) The Corporation shall, by regulations, specify—

(a) the form and manner in which the resolution plan is required to be made; and

(b) any relevant information required by the Corporation.

(3) The Corporation may require a specified service provider to provide any information as may be necessary for the purpose of resolution, including any information required for the transfer or sale of the assets of the specified service provider.

**41.** (1) Every restoration plan shall be revised annually and the appropriate regulator and the Corporation shall be informed of such revised restoration plan, within seven days of the revision.

Change,  
revision, etc.,  
of resolution  
plan and  
restoration  
plan.

(2) Every material change in the restoration plan shall be immediately informed to the appropriate regulator and the Corporation.

(3) The appropriate regulator shall review the information provided in the restoration plan and if after such review, it determines that the plan would not ensure restoration within a reasonable period, it shall inform the specified service provider of such deficiency, and the specified service provider shall resubmit the restoration plan within such period as may be directed by the appropriate regulator:



Provided that the appropriate regulator may, if it considers necessary in the interest of restoration of the specified service provider, modify such deficient restoration plan and such modified plan shall be binding on the specified service provider.

(4) Every resolution plan shall be revised annually and the Corporation and the appropriate regulator shall be informed of such revised resolution plan within seven days of such revision.

(5) Every material change in the resolution plan shall be immediately informed to the Corporation and the appropriate regulator.

(6) The Corporation shall review the information provided in the resolution plan and if after such review, the Corporation determines that the plan does not comply with the provisions of this section and is not comprehensive, it shall inform the specified service provider of such deficiency, and the specified service provider shall resubmit the resolution plan within such period as may be directed by the Corporation:

Provided that the Corporation may, if it considers necessary in the interest of orderly resolution of the specified service provider, modify such deficient resolution plan on its own and such modified plan shall be binding on the specified service provider.

(7) For the purposes of this section,—

(a) the appropriate regulator shall, by regulations, specify the meaning of "material change" in the restoration plan; and

(b) the Corporation shall, in consultation with the appropriate regulator, specify by regulations, the meaning of "material change" in the resolution plan.

## CHAPTER VIII

### MATERIAL, IMMINENT AND CRITICAL RISK TO VIABILITY

Material risk to viability.

42. (1) Where the appropriate regulator classifies a specified service provider in the category of material risk to viability, it may carry out additional inspections to monitor the risk to viability of the specified service provider.

(2) The appropriate regulator may, by order, prevent the specified service provider which is classified in the category of material risk to viability, from carrying out any or all of the following actions, namely:—

(a) accepting funds which increase the liabilities to consumers;

(b) declaration or payment of dividends to any shareholder of the specified service provider;

(c) payment of any bonus to any director, employee or manager of the specified service provider;

(d) acquiring any interest in any other business;

(e) establishing new locations for carrying out business or acquiring new clients;

(f) carrying out transactions with any person related to the specified service provider; or

(g) repayment of any debt which is not due.

(3) The appropriate regulator may, by order, require the specified service provider, classified in the category of material risk to viability to carry out any or all of the following actions, namely:—

(a) increase the capital of the specified service provider through such means as may be stated in the order, which may include conversion of securities from one type to another in terms of such securities;

(b) issue new securities;

(c) sell identified assets; or

(d) such other action as may be required by the appropriate regulator.

(4) The appropriate regulator may, on an application of the specified service provider, vary the order made under sub-section (2) or sub-section (3), if it is satisfied that such variation shall,—

(a) reduce the financial obligation of the specified service provider; or

(b) restore the specified service provider to the category of low or moderate risk to viability.

**43. (1)** A specified service provider may be classified in the category of imminent risk to viability—

Imminent risk to viability.

(a) by the appropriate regulator—

(i) under sub-section (1) of section 36;

(ii) if the specified service provider has not submitted a restoration plan within the period specified under section 38; or

(iii) if the specified service provider has failed to implement the restoration plan, in full or in part, within the period indicated in its restoration plan;

(b) by the Corporation—

(i) under sub-section (4) of section 37; or

(ii) if the specified service provider has failed to submit a resolution plan under section 38 to the Corporation.

(c) by the appropriate regulator or by the Corporation, as the case may be, when an order is made by any court or tribunal that there has been a fraud in the conduct of the business of the specified service provider.

*Explanation.*— For the purposes of this sub-section, the term "fraud" shall have the same meaning as assigned to it in section 447 of the Companies Act, 2013 which, in the opinion of the Corporation, may have a bearing on the risk to viability of the specified service provider.

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(2) A specified service provider classified in the category of imminent risk to viability shall, if it is not a systemically important financial institution, submit a resolution plan to the Corporation within the period specified in sub-section (1) of section 38;

(3) When a specified service provider is classified in the category of imminent risk to viability, the Corporation,—

(a) may appoint an officer or any person authorised by it to inspect the specified service provider, including by being present at the principal location of business and any other location of the specified service provider, and observing any meeting of the management of the specified service provider or any other functioning of the specified service provider;

(b) may by an order, prevent the specified service provider from undertaking any or all of the following actions, namely:—

(i) accepting funds which increase its liabilities and the number of consumers;

(ii) declaration or payment of dividends to any stakeholder of the specified service provider;

(iii) payment of any bonus to any director, employee or manager of the specified service provider;

(iv) acquiring interest in any other businesses;

(v) establishing new locations for carrying on businesses or acquiring new clients;

(vi) carrying out transactions with any person related to the specified service provider;

(vii) repayment of any debt which is not due;

(viii) payment of any fees to any agent or service provider of the specified service provider;

(ix) payment of any remuneration to any employee, director or manager of the specified service provider in excess of any limit set in the order;

(x) providing any financial service as may be specified in the order;

(xi) making of any advances;

(xii) any repatriation of capital and deployment of funds where the specified service provider is a branch office without the approval of the Corporation; or

(xiii) any other action, which in the opinion of the Corporation, may help in the resolution of the specified service provider.

(c) may, by order, require the specified service provider to carry out any or all of the following actions, namely:—

(i) increase the capital of the specified service provider through such means as may be stated in the order, which may include conversion of securities from one type to another in terms of such securities;

(ii) issue new securities;

(iii) sell identified assets; or

(iv) take such other action as may be required by the appropriate regulator.

(4) Notwithstanding anything in this Act, any classification of a central counterparty in the category of imminent risk to viability shall only be made by the appropriate regulator, which shall record its reasons for such classification and inform the Corporation within fifteen days of the classification.

(5) The appropriate regulator shall, in respect of a specified service provider classified in the category of imminent risk to viability under this section or critical risk to viability under section 45, exercise its powers under the law regulating such specified service provider, notwithstanding anything to the contrary in such law, to the extent it is not inconsistent with the provisions of this Act.

**44. (1)** The appropriate regulator may, in respect of a central counterparty classified in the category of material or imminent risk to viability, in addition to the actions under section 42 and section 43, take the following additional measures of recovery, namely:—

(a) allocate uncovered losses caused by participant default, including variation margin haircutting, utilising the initial margin of participants and making additional cash calls on its participants;

(b) address uncovered liquidity shortfalls such as obtaining additional funds from third-party institutions or from participants;

Additional powers of appropriate regulator in respect of central counterparty.

(c) replenish financial resources including by making cash calls on participants or recapitalising such central counterparty in such manner as may be specified by regulations made by the appropriate regulator;

(d) re-establish a matched book by a central counterparty, including forced allocation of contracts or partial or complete termination of contracts;

(e) allocate losses which are not related to participant default, including allocating additional capital;

(f) set-off, close-out, netting, collateralisation and segregation of member assets;

(g) issuance of equity to the creditors;

(h) prohibition of early termination rights; or

(i) such other measures as may be deemed necessary by the appropriate regulator.

(2) For the purposes of this section,—

(a) "cash call" in relation to a central counterparty means a situation where such central counterparty asks its existing participants to contribute such additional funds as may be specified by regulations made by the appropriate regulator;

(b) "haircut" means a percentage reduction in the amount that is payable to the creditors.

**45.** (1) Where a specified service provider is classified in the category of critical risk to viability,—

Critical risk to viability.

(i) by the appropriate regulator under sub-section (1) of section 36; or

(ii) by the Corporation under sub-section (4) of section 37,

the provisions of Chapters X, XI and XII shall apply.

(2) The appropriate regulator or the Corporation, as the case may be, before classifying a specified service provider in the category of critical risk to viability, shall consider the potential effect of such classification on—

(a) any person related to the specified service provider; and

(b) stability of the financial system of any other relevant jurisdiction.

(3) Any classification of a specified service provider in the category of critical risk to viability shall be by an order in writing, which shall be published in such form and manner as may be specified by regulations made by the Corporation, notwithstanding anything to the contrary in the Companies Act, 2013 or any other law for the time being in force.

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(4) The order of classification under sub-section (3) shall be effective from the date of its publication.

(5) Upon classification of a specified service provider in the category of critical risk to viability under sub-section (3),—

(a) the Corporation shall be deemed to be the administrator of that specified service provider under Chapter XI;

(b) no legal action or proceeding against such specified service provider, including any arbitration proceeding, shall commence or continue until such period as may be specified in the order referred to in sub-section (3), or until conclusion of the resolution under section 56, or until the date of the order appointing the Corporation as the liquidator under section 63, as the case may be;

(c) no payment, repayment or acceptance of deposits shall be made or liabilities incurred, except on such terms and conditions as may be specified in the order under

sub-section (3), until the date of the order appointing the Corporation as the liquidator under section 63;

(d) if such specified service provider is an insurance company, it shall not exercise any contractual rights to surrender or terminate an insurance cover or take any action as may be determined by the Corporation to be relevant for the purposes of carrying out resolution while preserving its value; and

(e) the Corporation shall make payment of deposit insurance in accordance with the provisions of section 29.

(6) Where a central counterparty is classified in the category of critical risk to viability under sub-section (3), no restriction referred to in clause (b) or clause (c) of sub-section (5) shall apply unless so directed in the order made under sub-section (3).

(7) Upon classification of a specified service provider in the category of critical risk to viability under sub-section (3), notwithstanding anything in any law for the time being in force,—

(a) the appropriate regulator may, by notification, withdraw or modify any authorisation or licence granted to the specified service provider to carry out any financial service; and

(b) no depositor of the relevant insured service provider shall have any deposit insurance with respect to any new deposit accepted by the insured service provider from the date of the order under sub-section (3), unless otherwise provided in that order.

Show cause  
notice.

**46.** A specified service provider shall not be classified in the category of material risk to viability under section 42, imminent risk to viability under section 43, or critical risk to viability under section 45, unless—

(a) a show cause notice is issued to such specified service provider in such form and manner as may be specified by regulations made by the Corporation; and

(b) the specified service provider has been given an opportunity to present its case within such period as may be specified by regulations made by the Corporation.

## CHAPTER IX

### EFFECT ON TERMINATION RIGHTS UNDER SPECIFIED CONTRACTS

Effect on  
termination  
rights under  
specified  
contracts.

**47.** (1) Notwithstanding the provisions relating to netting and set-off under the Payments and Settlement Systems Act, 2007, the Reserve Bank of India Act, 1934 and the Securities (Contracts) Regulation Act, 1956, entry into resolution of a specified service provider shall not cause early termination of a specified contract so long as the substantive obligations of the contract (including payment and delivery obligations, and provision of collateral) continue to be performed, subject to such other safeguards as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.

51 of 2007.  
2 of 1934.  
42 of 1956.

(2) Notwithstanding anything in sub-section (1) or any provision relating to netting and set-off under the Payments and Settlement Systems Act, 2007, Reserve Bank of India Act, 1934, or the Securities (Contracts) Regulation Act, 1956, if a termination right under a specified contract becomes exercisable, the Corporation shall have the power, subject to such safeguards, as may be specified by regulations made by it, to temporarily prohibit by an order in writing, the exercise of such termination rights of any party to such specified contract with the relevant specified service provider or its associate company or subsidiary (where the obligations of the associate company or subsidiary are guaranteed or otherwise supported by such specified service provider) if the relevant termination right is exercisable solely on entry into resolution or in connection with the exercise of any resolution power, except liquidation, in respect of such specified service provider or its associate company or subsidiary, as the case may be, under this Act.

51 of 2007.  
2 of 1934.  
42 of 1956.

(3) The prohibition under sub-section (2) shall not—

(a) exceed two business days; and

(b) affect the exercise of early termination rights of a central counterparty against a specified service provider under resolution in the event of default on the part of the specified service provider other than on grounds of an entry into resolution or the exercise of any power by the Corporation under this section.

(4) The powers under sub-section (2) shall be exercised by the Corporation,—

(a) in consultation with the appropriate regulator; and

(b) for ensuring systemic stability.

(5) For the purposes of this section,—

(a) "entry into resolution" shall mean entry into resolution of a specified service provider which is classified in the category of critical risk to viability under this Act;

(b) "specified contract" shall include such contracts or agreements as may be specified by regulations made by the Corporation in consultation with the appropriate regulator;

(c) "termination right" shall have the meaning as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator.

## CHAPTER X

### METHODS AND TIME LIMIT OF RESOLUTION

48. (1) The Corporation may resolve a specified service provider classified in the category of critical risk to viability under section 45 through a scheme or a bail-in instrument, in such form and manner as may be specified by regulations made by it, by—

Methods of resolving a specified service provider.

(a) transferring the whole or part of the assets and liabilities of the specified service provider to another person, on terms agreed between the Corporation and such person;

(b) creating a bridge service provider in accordance with section 50;

(c) bail-in in accordance with the provisions of section 52;

(d) merger or amalgamation of the specified service provider;

(e) acquisition of the specified service provider, in whole or in part;

(f) liquidation in accordance with the provisions of Chapter XII; or

(g) a combination of any of the methods listed in clauses (a) to (f).

(2) Notwithstanding anything in sub-section (1), in the case of an insurance company, the Corporation may, in consultation with the appropriate regulator,—

(a) classify such insurance company as a run-off entity to allow the present insurance policies to run to their expiration dates and for that purpose, the Corporation may—

(i) restrain the insurance company from writing any new business;

(ii) prohibit the insurance company from exercising termination rights, in accordance with the provisions of section 47;

(iii) take measures to replenish financial resources, including recapitalising the insurance company in such manner as may be specified by regulations made by the Corporation:

Provided that shortfall, if any, over time shall be allocated across policyholders, creditors and shareholders in accordance with section 80;

(b) sell or transfer the portfolios of the insurance company to another insurance company including a run-off entity, in such manner as may be specified by regulations made by the Corporation.

(3) Where the scheme of resolution referred to in sub-section (1) involves any transfer of the assets and liabilities of the specified service provider or the acquisition, amalgamation or merger of a specified service provider or any combination thereof, no such scheme shall be made by the Corporation unless the proposed transferee entity has obtained the consent of the appropriate regulator in this regard.

(4) A scheme made under this section shall have regard to,—

(a) the treatment of all liabilities of the specified service provider in accordance with the priority they would have in liquidation; and

(b) the treatment of such persons affected adversely by the order of classification in the category of critical risk to viability under section 45, in accordance with the priority they would have on a liquidation, to bear losses on an equal footing with each other,

except in such circumstances as the Corporation may, for the reasons to be recorded in writing, specify.

(5) The scheme prepared under sub-section (1) shall be published by the Corporation in the Official Gazette and a copy thereof shall be forwarded to the Central Government to be laid before both Houses of Parliament.

(6) All expenses towards the resolution costs shall be made in the following manner, namely:—

(i) the fees paid by the specified service provider to the Corporation under clause (a) of sub-section (1) of section 22, shall be utilised first;

(ii) the resources of the specified service provider under resolution or other external source of funding, if any, shall be utilised next, keeping in view the objectives of the Act; and

(iii) the Corporation shall pay for the remaining costs from the amounts excluding the fees utilised under clause (i) in the Corporation Resolution Fund:

Provided that in drawing any additional amount from the Corporation Resolution Fund, the grants, if any, received from the Government shall be utilised after exhausting the money received from all other sources in that Fund:

Provided further that the Corporation may recover any amounts drawn from the Corporation Resolution Fund by imposing an *ex post* fee on the specified service provider under resolution wherever possible, keeping in view the objectives of this Act, or in such manner as may be specified in the scheme, subject to any regulations made by the Corporation in this regard.

**49.** (1) Any scheme prepared under section 48 may contain any or all of the following matters, namely:—

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations, of the transferee specified service provider;

(b) the transfer to the transferee specified service provider of the business, properties, assets and liabilities of the specified service provider on such terms and conditions as may be specified in the scheme;

(c) any change in the board of directors, or the appointment of a new board of directors, of the specified service provider or of the transferee specified service provider,



and the authority by whom, the manner in which, and the other terms and conditions subject to which, such change or appointment shall be made and in the case of appointment of a new board of directors or of any director, the period for which such appointment shall be made;

(d) the alteration of the memorandum and articles of association of the specified service provider or of the transferee specified service provider for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the resolution;

(e) subject to the provisions of the scheme, the continuation by or against the specified service provider or, as the case may be, the transferee specified service provider, of any legal action or proceeding pending against the specified service provider, including any arbitration proceeding immediately before the date of the order of stay under clause (b) of sub-section (5) of section 45;

(f) the reduction of interest or rights which the members, consumers (including depositors) and other creditors have in or against the specified service provider before its resolution, to such extent as the Corporation and the appropriate regulator consider necessary in the public interest or in the interests of the members, consumers (including depositors) and other creditors or for the maintenance of the business of the specified service provider;

(g) the payment in cash or otherwise to consumers (including depositors) and other creditors in full satisfaction of their claim—

(i) in respect of their interest or rights in or against the specified service provider before its resolution; or

(ii) where their interest or rights in or against the specified service provider has or have been reduced under sub-clause (f) in respect of such interest or rights as so reduced;

(h) the allotment to the members of the specified service provider for shares held by them in the specified service provider before its resolution whether their interest in such shares has been reduced under sub-clause (f) or not, of shares in the specified service provider in the transferee specified service provider and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim—

(i) in respect of their interest in shares in the specified service provider before its resolution; or

(ii) where such interest has been reduced under sub-clause (f), in respect of their interest in shares so reduced; or

(i) the continuance of the service of all the employees of the specified service provider excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947, as specifically mentioned in the scheme, in the transferee specified service provider, at the same remuneration and on the same terms and conditions of service, which they were getting, or as the case may be, by which they were being governed, immediately before the date of the order of classification in the category of critical risk to viability under stay under section 45:

Provided that the scheme may contain a provision that—

(i) the specified service provider shall pay or grant not later than three years from the date on which the scheme is made under section 48, to the said employees the same remuneration and upon the same terms and conditions of

service as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of a comparable specified service provider to be determined for this purpose by the appropriate regulator;

(ii) the transferee specified service provider shall pay or grant not later than three years from the date on which the scheme is made under section 48, to the said employees the same remuneration and upon the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee specified service provider subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee specified service provider:

Provided further that if in any case under clause (ii) of the first proviso, any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee specified service provider, the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause, to the appropriate regulator whose decision thereon shall be final;

(j) notwithstanding anything in clause (i), where any of the employees of the specified service provider not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme under clause (i) or where any employees of the specified service provider have by notice in writing given to the specified service provider or, as the case may be, the transferee specified service provider at any time before the expiry of one month next following the date on which the scheme is made under section 48, intimated their intention of not becoming employees of the transferee specified service provider, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits ordinarily admissible to them under the rules or authorisations of the specified service provider immediately before the date of the order of classification in the category of critical risk to viability made under section 45;

14 of 1947.

(k) any other terms and conditions for the resolution of the specified service provider as may be specified by regulations made by the Corporation;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the resolution shall be fully and effectively carried out; and

(m) the effect of the resolution action on any person related to the specified service provider.

(2) On and from the date of the coming into effect of the scheme or any provision thereof under section 48, the scheme or such provision shall be binding on the specified service provider or, as the case may be, on the transferee specified service provider and any other specified service provider concerned in the resolution and also on all the members, consumers (including depositors) and other creditors and employees of each of the specified service providers, and on any other person having any right or liability in relation to any of those specified service providers, including the trustees or other persons, managing, or connected in any other manner with, any provident fund or other fund maintained by any person or the specified service provider.

(3) If any difficulty arises in giving effect to the provisions of the scheme, the Corporation, in consultation with the appropriate regulator may, by an order, do anything not inconsistent with the provisions of the scheme, which appears to it necessary or expedient for the purpose of removing the difficulty.

(4) Nothing in this section shall be deemed to prevent the resolution of a specified service provider by a single scheme of several specified service providers in respect of each of which an order of classification in the category of critical risk to viability under section 45 has been made.

(5) The provisions of this section and the scheme prepared under section 48 shall have effect, notwithstanding anything to the contrary in this Act or in any other law or any agreement, award or other instrument, for the time being in force.

(6) Any scheme prepared under section 48 may contain all or any of the matters specified under this section to the extent it is relevant for the methods of resolution under that section, used for resolving a specified service provider.

(7) For the purposes of this section,—

(a) “transferee specified service provider” means an acquirer of a specified service provider under resolution;

(b) any reference to the terms and conditions of service of an employee, shall not be construed as extending to the rank or status of such employee.

18 of 2013. **50.** (1) The Corporation may create a bridge service provider by incorporating a company under the provisions of the Companies Act, 2013, for the purpose of resolving a specified service provider, with the aim of eventual resolution under sub-section (12).

Transfer of assets and liabilities to bridge service provider.

18 of 2013. (2) Notwithstanding anything to the contrary in the Companies Act, 2013, the shares of the bridge service provider shall be held entirely by the Corporation.

(3) The articles of association of the bridge service provider shall be,—

(a) approved by the Corporation; and

(b) executed by at least three Members of the Corporation.

(4) The bridge service provider shall have a board of directors comprising of at least three directors and not more than ten directors, as appointed by the Corporation.

(5) Upon an application being made by the Corporation, the appropriate regulator shall, subject to such terms and conditions as it deems fit, provide such authorisation to the bridge service provider, as may be required, as expeditiously as possible.

(6) After the appropriate regulator has granted the appropriate authorisation to the bridge service provider,—

(a) the Corporation may by a scheme under section 48, transfer the whole or part of the assets, liabilities, businesses, properties and undertakings of the specified service provider to such bridge service provider;

(b) the Corporation may by the scheme under section 48, provide for different arrangements for management and control at different stages;

(c) the bridge service provider shall have the same powers and be subject to the same laws as a specified service provider carrying out similar financial services.

(7) The Corporation may direct the bridge service provider in respect of any matter relating to its functions and the bridge service provider shall comply with such directions.

(8) The Corporation or the appropriate regulator may exempt the bridge service provider from complying with the provisions of any Act or the rules or regulations administered by the Corporation, or the appropriate regulator, as the case may be, for a period not exceeding one year.

(9) The bridge service provider shall be entitled to any other exemption which the Central Government may, by order, determine.

(10) The Corporation may provide the bridge service provider with such funds from the Corporation Resolution Fund, as may be required by the bridge service provider to carry on its business.

(11) The Corporation shall resolve the bridge service provider as expeditiously as possible, and in any event, within one year from the date of its incorporation.

(12) The Corporation shall resolve the bridge service provider by—

(a) transferring, by way of a scheme under section 48, the whole or any part of the assets, liabilities, businesses, properties or undertakings of the bridge service provider to another person capable of providing the services of a specified service provider, on such terms as may be agreed between the Corporation and such person;

(b) sale, by way of a scheme under section 48, of the shares of the bridge service provider constituting more than three-fourths of the equity capital of the bridge service provider; or

(c) liquidation of the bridge service provider under this Act and the provisions of Chapter XII shall apply, *mutatis mutandis*, to such bridge service provider.

Claw-back of performance incentive.

**51. (1)** A specified service provider shall submit to the appropriate regulator, such details of remuneration paid to its chairperson, director, chief executive officer (by whatever name called) and such other officer, in such form and manner, within such period, as may be specified by regulations made by the appropriate regulator, in consultation with the Corporation:

Provided that no specified service provider shall be required to submit details of remuneration when it is classified in the category of low or moderate risk to viability.

(2) The appropriate regulator shall specify by regulations made by it, the manner in which certain portion of such remuneration may be designated as performance based incentive for such chairperson, director, chief executive officer, (by whatever name called) and such other officer referred to in sub-section (1).

(3) The specified service provider may, by an order in writing, after providing an opportunity of being heard, in compliance with regulations made under sub-section (2), designate such part of the remuneration of such officers, as performance based incentive, as it considers fit.

(4) If a specified service provider is classified in the category of critical risk to viability by the appropriate regulator or by the Corporation under section 45, the Corporation may, by an order, after giving a reasonable opportunity of being heard, require an officer referred to in sub-section (5) to return the performance based incentive to the specified service provider.

(5) An officer of a specified service provider shall be subject to an order under sub-section (4), if—

(a) the officer acted, or omitted to act in a manner that caused, or materially contributed to, the specified service provider to be classified in the category of critical risk to viability; and

(b) the act was done, or the omission was made, intentionally, recklessly or negligently.

(6) The Corporation shall ensure that any act or omission referred to in sub-section (5) is commensurate with the proportion of performance based incentive which is to be returned under sub-section (4).

(7) No payment made before three years from the date on which the specified service provider was classified in the category of critical risk to viability, shall be required to be returned to the specified service provider under this section.

(8) The order under sub-section (4) shall be applicable to a chairperson, director, chief executive officer (by whatever name called) and such other officer even if such chairperson, director, chief executive officer or other officer has ceased to hold the office as such before the order was made, but held such office within the period mentioned in sub-section (7).

43 of 1961. (9) If a chairperson, director, chief executive officer, (by whatever name called) or such other officer fails to comply with an order made under sub-section (4), the Corporation may, by order in writing, proceed to realise the amount in the manner set out in the Second Schedule to the Income-tax Act, 1961.

**52.** (1) Notwithstanding anything in section 49, the Corporation may, in consultation with the appropriate regulator, if it is satisfied that it necessary to bail-in a specified service provider to absorb the losses incurred, or reasonably expected to be incurred, by the specified service provider and to provide a measure of capital so as to enable it to carry on business for a reasonable period and maintain market confidence, take an action under this section by a bail-in instrument or a scheme to be made under section 48.

Bail-in.

(2) The bail-in instrument or scheme referred to in sub-section (1) shall be in such form and manner as may be specified by regulations made by the Corporation, and contain—

(a) a bail-in provision; or

(b) a provision for the purposes of or in connection with any bail-in provision made by that instrument or by another instrument.

(3) Subject to sub-section (5), a bail-in provision means any or a combination of the following, namely:—

(a) a provision cancelling a liability owed by a specified service provider;

(b) a provision modifying or changing the form of a liability owed by a specified service provider; and

(c) a provision that a contract or agreement under which a specified service provider has a liability shall have effect as if a specified right had been exercised under it.

*Explanation.*—In this sub-section, the expressions,—

(a) “cancelling a liability owed by the specified service provider” includes cancelling a contract under which the specified service provider has a liability;

(b) “modifying a liability owed by specified service provider” includes modifying the terms or the effect of the terms of a contract under which the specified service provider has a liability;

(c) “changing the form of a liability” includes—

(i) converting an instrument under which the specified service provider owes a liability from one form or class to another;

(ii) replacing such an instrument with another instrument of a different form or class;

(iii) creating a new security of any form or class in connection with the modification of such an instrument.

(4) The Corporation shall, by regulations, specify the liabilities or classes of liabilities of a specified service provider, which may be subject to bail-in.

(5) The appropriate regulator may, in consultation with the Corporation, require specified service providers or classes of specified service providers to maintain liabilities that may be subject to bail-in and the terms and conditions for such liabilities to contain a provision to the effect that such liabilities are subject to bail-in.

(6) In addition to the actions laid down in sub-section (3), the Corporation may, in consultation with the appropriate regulator, take the following actions in respect of a central counterparty, namely:—

- (a) direct the haircutting of the collaterals and margins;
- (b) direct the issuance of equity to the creditors.

*Explanation.*—For the purposes of this sub-section, “haircut” shall have the same meaning as assigned to it in section 44.

(7) The bail-in instrument or scheme under this section shall not affect—

- (a) any liability owed by a specified service provider to the depositors to the extent such deposits are covered by deposit insurance;
- (b) any liability that the specified service provider has by virtue of holding client assets.

*Explanation.*—In this clause, the expression, “client assets” shall include such assets as may be specified by regulations made by the appropriate regulator;

- (c) any liability of original maturities upto seven days;
- (d) any obligation to a central counterparty;
- (e) any liability, so far as it is secured;
- (f) any liability owed to employees or workmen including pension liabilities of the specified service provider except for liabilities designated as performance based incentive under section 51;
- (g) any transaction covered under section 47; and
- (h) such other liabilities as may be specified by regulations made by the appropriate regulator in consultation with the Corporation and the Central Government.

(8) The Corporation shall forward the bail-in instrument made under this section to the Central Government together with a report in such form and manner as may be prescribed, which shall contain—

- (a) the reasons why a bail-in instrument under this section was made;
- (b) the effect of the bail-in instrument; and
- (c) the deviations, if any, from the requirements of sub-section (3) and the reasons therefor.

(9) A copy of the report received under sub-section (8) shall, as soon as may be after it is received by the Central Government, be laid before each House of Parliament.

(10) The provisions of sub-sections (3) and (6) of section 49 shall apply, *mutatis mutandis*, to the bail-in instrument or scheme under this section.

**53.** Without prejudice to the provisions of section 52, a bail-in instrument may—

- (a) cancel or modify any securities to which section 52 applies;
- (b) convert any such securities from one class to another, including the creation of a new security in modification of an existing security;
- (c) make provision with respect to the rights attaching to securities issued by the specified service provider, including—
  - (i) that the specified rights attaching to securities are to be treated as having been exercised;
  - (ii) that the Corporation is authorised to exercise such specified rights attaching to securities;

Bail-in  
instrument in  
relation to  
securities.



(iii) that the specified rights attaching to securities may not be exercised for a period specified in the bail-in instrument;

(d) provide for the listing of securities issued by the specified service provider to be discontinued;

(e) provide for securities issued by the specified service provider to be transferred to the Corporation or any other entity;

(f) make such other provision for or in connection with the transfer of securities issued by the specified service provider, as it may consider appropriate, whether or not the transfer was the subject of that bail-in instrument.

**54.** (1) Where the Corporation has made a provision for transfer of securities in the bail-in instrument under clause (e) of section 53, the Corporation may make one or more onward transfer bail-in instruments.

Onward transfer of securities.

(2) The onward transfer bail-in instrument under sub-section (1) may,—

(a) provide for the transfer of—

(i) securities issued by the specified service provider before the bail-in instrument was made and transferred by such bail-in instrument; or

(ii) securities issued by the specified service provider after the bail-in instrument was made; or

(b) make any other provision for, or in connection with the transfer of securities issued by the specified service provider whether or not the transfer was the subject of that bail-in instrument.

(3) The form and manner of the bail-in instrument under section 52 shall apply to the onward transfer bail-in instrument.

**55.** (1) For the purposes of this Chapter, the Corporation shall have regard to the following safeguards to the extent possible keeping in view the objectives of this Act, namely:—

Safeguards for applying methods of resolution.

(a) ensuring the continuity of critical functions of the specified service provider;

(b) ensuring that no creditor of the specified service provider is left in a worse position as a result of application of any method of resolution under section 48, than such creditor would have been in the event of its liquidation under Chapter XII;

(c) protecting the client funds, and client assets of the specified service provider, to no less an extent than they would be protected in liquidation under Chapter XII; and

(d) such other safeguards as may be specified by regulations made by the Corporation.

(2) Notwithstanding anything in sub-section (1), for the purposes of bail-in under section 52, the Corporation shall also have regard to the following additional safeguards, namely:—

(a) cancellation of the liabilities of any specified service provider to its creditors shall be done in accordance with the order of priority laid down in section 80;

(b) such liabilities may be cancelled where the instrument creating it contains a provision to the effect that the parties to the contract agree to the liability being eligible for a bail-in;

(c) equal treatment shall be given to all rights and liabilities of the same class;

(d) such other safeguards as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.



(3) The Corporation shall, while exercising powers under this Act, take measures to ensure the protection of such collateral arrangements, set-off or netting arrangements so as to prevent—

(a) the transfer of some, but not all, of the rights and liabilities that are protected under the collateral arrangements, set-off or netting arrangements; and

(b) the modification or termination of rights and liabilities that are protected under collateral arrangements, set-off or netting arrangements.

(4) For the purposes of sub-section (3), rights and liabilities are to be treated as protected under such arrangement if the parties to the arrangement are entitled to set-off or net those rights and liabilities:

Provided that the Corporation may, if it considers necessary to ensure the availability of the covered deposits—

(i) transfer covered deposits which are part of an arrangement under sub-section (3), without transferring other assets, rights or liabilities that are part of the same arrangement; or

(ii) transfer, modify or terminate those assets, rights or liabilities without transferring the covered deposits.

(5) For the purposes of this section, the expressions,—

(a) “client assets” and “client funds” shall mean such assets or funds as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator;

(b) the expressions “collateral arrangements”, “set-off and netting arrangements”, “covered deposits”, shall mean such arrangements or deposits as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator.

Time limit on resolution.

**56.** (1) The resolution of the specified service provider under this Act, shall be completed expeditiously and not later than one year from the date on which such specified service provider is classified to be at critical risk to viability:

Provided that the period of one year may be extended by the Corporation, by an order, for a further period not exceeding one year for reasons to be recorded in writing:

Provided further that the one year time limit shall not be applicable in case of liquidation under Chapter XII.

(2) In case resolution of the specified service provider is not completed within the period provided in sub-section (1), the Corporation shall liquidate such specified service provider under Chapter XII.

(3) The Corporation may, subject to sub-section (1), specify different time periods for resolution of specified service provider, depending on the process of resolution, the size and complexity of the specified service provider.

Continuity of certain functions.

**57.** (1) The supply of services relating to the continuance of the critical functions of the specified service provider or any other person as determined by the Corporation shall not be terminated, suspended or interrupted during the resolution of such specified service provider.

(2) For the purposes of sub-section (1), the Corporation may, in consultation with the appropriate regulator make such regulations as it may consider necessary .

## CHAPTER XI

### ADMINISTRATION

Powers of Corporation as an administrator.

**58.** (1) From the date of classification of a specified service provider in the category of critical risk to viability under section 45,—

(a) the management of the affairs of the specified service provider shall vest in the Corporation as the administrator;

(b) the powers of the board of directors of the specified service provider shall stand suspended and be exercised by the administrator;

(c) the officers and other employees of the specified service provider shall extend all assistance and co-operation to the administrator as may be required by the administrator in managing the affairs of the specified service provider;

(d) the financial institutions maintaining accounts of the specified service provider shall act on the instructions of the administrator in relation to such accounts and furnish all information relating to the specified service provider available with them to the administrator as may be required by him; and

(e) the Corporation shall have such other powers in relation to administration of the specified service provider, as may be specified by notification by the Central Government.

(2) The administrator referred to in sub-section (1), shall—

(a) act and execute in the name and on behalf of the specified service provider, all deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by notification by the Central Government;

(c) have the authority to—

(i) access the electronic records of specified service provider from any information utility or credit information system regulated under any law for the time being in force having financial information of the specified service provider;

(ii) access the books of account, records, and other relevant documents of specified service provider available with government authorities, statutory auditors, accountants, and such other persons as may be specified by regulations made by the Corporation;

(iii) appoint, in consultation with the appropriate regulator, for such period as it may determine, an officer of the Corporation to oversee the affairs of the specified service provider; and

(d) undertake any action under section 48, except liquidation of the specified service provider.

(3) While the Corporation is the administrator of the specified service provider,—

(a) no shareholders of the specified service provider or any other person shall nominate or appoint any person to be a director of such specified service provider;

(b) no resolution passed at any meeting of the shareholders of such specified service provider shall be given effect to, unless approved by the Corporation; and

(c) no person shall, notwithstanding anything in any other law or in any contract, or the memorandum or articles of association of the specified service provider, be entitled to claim any compensation for the loss or termination of his office.

(4) Notwithstanding anything in sub-section (1), the Corporation may, in consultation with the appropriate regulator, in respect of a central counterparty, take such additional measures in the manner as may be specified by regulations by the Corporation, to—

(a) allocate uncovered losses caused by participant default, including variation margin haircutting, utilising the initial margin of participants and making additional cash calls on its participants;

(b) address uncovered liquidity shortfalls such as obtaining additional funds from third-party institutions or from participants;

(c) replenish financial resources, including making cash calls on participants or recapitalising such central counterparties in such manner as may be specified by regulations made by the Corporation in consultation with the appropriate regulator;

(d) re-establish a matched book by a central counterparty, including forced allocation of contracts or partial or complete termination of contracts;

(e) allocate losses which are not related to participant default, including allocating additional capital;

(f) carry out set-off, close-out netting, collateralisation and segregation of member assets;

(g) issue equity to the creditors;

(h) impose a temporary prohibition on early termination rights; or

(i) take such other measures as may be deemed necessary by the Corporation.

(5) For the purposes of this sub-section,—

(a) "cash-call" shall have the same meaning as assigned to it in sub-section (2) of section 44;

(b) "haircut" shall have the same meaning as assigned to it in sub-section (2) of section 44.

(6) The Corporation may, subject to the provisions of sections 48 and section 49, place the specified service provider, except a central counterparty, in liquidation in accordance with the provisions of Chapter XII.

Functions of  
administrator.

**59.** (1) The administrator shall perform the following functions, namely:—

(a) take control and custody of any asset over which the specified service provider has ownership rights as recorded in the balance-sheet of the specified service provider, or with information utility or credit information system regulated under any law for the time being in force or the depository of securities or any other registry that records the ownership of assets, including—

(i) assets over which the specified service provider has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the specified service provider;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets, including intellectual property;

(v) securities, including shares, held in any subsidiary of the specified service provider, financial instruments and insurance policies of the specified service provider; and

(vi) assets subject to the determination of ownership by a court or authority; and

(b) perform such other functions as may be prescribed.

(2) For the purposes of sub-section (1), "assets" shall not include—

(a) assets owned by a third-party in possession of the specified service provider held under trust or under contractual arrangements, including bailment;

(b) assets of any Indian or foreign subsidiary of the specified service provider; and

(c) such other assets as may be notified by the Central Government in consultation with the Corporation and the appropriate regulator.

**60.** (1) Without prejudice to the provisions of section 58, the Corporation may, for reasons to be recorded in writing, by order, remove from office, with effect from such date as may be specified in the order, any chairperson, director, chief executive officer (by whatever name called) or other officer or employee of the specified service provider which has been classified in the category of imminent risk to viability under section 43 or critical risk to viability under section 45, as the case may be.

Power of Corporation to remove managerial and other persons from office.

(2) No order under sub-section (1) shall be made unless the chairperson, director or chief executive officer or other officer or employee concerned has been given a reasonable opportunity of making a representation to the Corporation against the proposed order:

Provided that if in the opinion of the Corporation any delay would be detrimental to the interests of the specified service provider, the Corporation may, while giving the opportunity of making the representation, by order direct that, pending the consideration of the representation, if any, the chairperson or director or chief executive officer or other officer or employee, as the case may be, shall not, with effect from the date of such order,—

(a) act as such chairperson or director or chief executive officer or other officer or employee;

(b) in any way, whether directly or indirectly, be concerned with, or take part in the management of the specified service provider.

(3) Any person who has been removed under sub-section (1) may, within thirty days from the date of the receipt of the order, prefer an appeal to the Tribunal.

(4) Where any chairperson, director or chief executive officer or other officer or employee of a specified service provider has been removed under sub-section (1), he shall—

(a) cease to be the chairperson or director, chief executive officer or other officer or employee of the specified service provider; and

(b) not be concerned with, or take part in the management of, any specified service provider, in any way, whether directly or indirectly, for such period not exceeding five years as may be mentioned in the order.

(5) Where any chairperson, director or chief executive officer or other officer or employee of a specified service provider has been removed under sub-section (1), the Corporation may, by order in writing, appoint a person in place of the chairperson or director, or chief executive officer or other officer or employee, as the case may be, with effect from such date as may be mentioned in the order.

(6) Any person appointed as chairperson, director or chief executive officer or other officer or employee under this section, shall,—

(a) hold office, during the pleasure of the Corporation, for a period not exceeding the period of resolution specified in section 56;

(b) not incur any obligation or liability by reason only of being a chairperson, director or chief executive officer or other officer or employee or for anything done or omitted to be done in good faith in the execution of the duties of his office or in relation thereto; and

(c) not be required to hold qualification shares in the specified service provider.

(7) Notwithstanding anything in any other law or in any contract, memorandum or articles of association of the specified service provider, on the removal of a person from office under this section, such person shall not be entitled to claim any compensation for the loss or termination of office.

(8) Any appointment or removal of a director, chief executive officer or other officer or employee under this section shall have effect, notwithstanding anything to the contrary in

the Companies Act, 2013 or any other law for the time being in force, or in any contract or any other instrument. 18 of 2013.

Power of Corporation to appoint additional directors.

**61.** (1) Where the Corporation is of the opinion that in the public interest or in the interests of the specified service provider, it is necessary to do so, it may, by order in writing, appoint, with effect from such date as may be specified in the order, one or more persons to hold office as additional directors of the specified service provider classified in the category of imminent risk to viability under section 43 or critical risk to viability under section 45, as the case may be.

(2) Any person appointed as an additional director under this section, shall—

(a) hold office during the pleasure of the Corporation;

(b) not incur any obligation or liability by reason only of being a director or for anything done or omitted to be done in good faith in the execution of the duties of the office or in relation thereto; and

(c) not be required to hold qualification shares in the specified service provider.

(3) For the purpose of reckoning any proportion of the total number of directors of the specified service provider, any additional director appointed under this section shall not be taken into account.

Supersession of board of directors.

**62.** (1) Without prejudice to the powers of the Corporation under section 58, where a specified service provider has been classified in the category of imminent risk to viability under section 43 or critical risk to viability under section 45 and the Corporation is satisfied that in the public interest or for preventing the affairs of such specified service provider from being conducted in a manner detrimental to the interest of the consumers or depositors of the specified service provider or for securing the proper management of the specified service provider, it is necessary to do so, the Corporation may, for reasons to be recorded in writing, by an order, supersede the board of directors of such specified service provider for a period not exceeding two years, as may be specified in the order.

(2) The Corporation may, on supersession of the board of directors of the specified service provider under sub-section (1), appoint an officer of the Corporation as an administrator for such period as it may determine.

(3) The Corporation may issue such directions to the administrator as it may deem appropriate, and the administrator shall be bound to follow such directions.

(4) Upon making the order of supersession of the board of directors of a specified service provider,—

(a) the chairperson, managing director and other directors as on the date of such supersession shall vacate their offices;

(b) all the powers, functions and duties of the board of directors shall, until the board of directors of such specified service provider is reconstituted, be exercised and discharged by the administrator appointed under sub-section (2):

Provided that the power exercised by the administrator under this Act shall have effect, notwithstanding that such power is exercisable by a resolution passed in the general meeting of such specified service provider.

(5) The Corporation may constitute a committee consisting of such persons, not exceeding three, who have experience in law, finance, banking, administration or accountancy to assist the administrator in discharge of his duties.

(6) The committee constituted under sub-section (5), shall meet at such times and places and observe such rules of procedure as may be specified by regulations made by the Corporation.

(7) The salary and allowances payable to the administrator and the members of the committee constituted under sub-section (5), shall be such as may be specified by regulations made by the Corporation and be payable by the specified service provider.

(8) Before the expiry of the period of supersession of the board of directors under sub-section (1), the administrator shall call the general meeting of the specified service provider to elect new directors.

(9) Notwithstanding anything in any other law or in any other contract, or bye-laws of the specified service provider, no person shall be entitled to claim any compensation for the loss or termination of his office on supersession under this section.

(10) The administrator appointed under sub-section (2) shall vacate his office immediately after the board of directors of the specified service provider has been constituted.

## CHAPTER XII

### LIQUIDATION

**63.** (1) Where the Corporation determines that liquidation is the most appropriate method for the resolution of a specified service provider under section 48, notwithstanding anything in any other law for the time being in force relating to liquidation and winding up, the Corporation shall make an application to the Tribunal for an order of liquidation in respect of such specified service provider.

Order of  
liquidation.

(2) The Tribunal shall, within a period of fourteen days from the date on which an application under sub-section (1) or section 93 is received, pass an order of liquidation and appoint the Corporation as a liquidator for a specified service provider, in accordance with the provisions of this Chapter:

Provided that the Corporation may designate any of its officers as the liquidator for the purposes of this Chapter.

(3) The Tribunal may, while passing the order of liquidation under sub-section (2), make an order prohibiting the commencement or continuance of all legal actions and proceedings against such specified service provider, till such period as the liquidation is in continuance under this Chapter.

(4) On the appointment of the liquidator under sub-section (2), all powers of the board of directors, key managerial personnel and the partners of the specified service provider, shall cease to have effect and shall vest in the liquidator.

(5) Any person aggrieved by the order of the Tribunal under this section may, within thirty days from the receipt of the order, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days, but within a further period not exceeding fifteen days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(6) Any person aggrieved by an order of the Appellate Tribunal may, within forty-five days from the date of receipt of the order, prefer an appeal to the Supreme Court on a question of law arising out of such order under this Act:

Provided that the Supreme Court may, entertain an appeal after the expiry of the said period of forty-five days, but within a further period not exceeding fifteen days, if it is satisfied that such person was prevented by sufficient cause from filing an appeal within that period.

(7) The order of liquidation under sub-section (2) shall be deemed to be a notice of discharge to the officers, employees and workmen of the specified service provider, except when the business of the specified service provider is continued during the liquidation process by the liquidator.



Cessation of liability to pay premium.

**64.** The liability of an insured service provider to pay premium under section 21 shall cease upon the appointment of the Corporation as the liquidator under section 63.

Bar on jurisdiction and transfer of proceedings.

**65.** (1) Notwithstanding anything in any other law for the time being in force, no proceeding for liquidation of a specified service provider shall be entertained by any court or tribunal other than the Tribunal, in accordance with the provisions of this Act.

(2) Any liquidation proceeding or any other claims, suits, applications or proceedings connected thereto, pending against any specified service provider, before any court or tribunal, on the commencement of this Act, shall stand transferred to the Tribunal.

(3) Subject to section 93, when an order of liquidation has been passed under section 63,—

(a) no suit or other legal proceeding shall be instituted by or against the specified service provider before any court, tribunal or authority, except before the Tribunal; and

(b) such suit or other legal proceedings pending before any court, tribunal or authority prior to the order of liquidation under section 63 shall stand transferred to the Tribunal:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the specified service provider, with the prior approval of the Tribunal.

(4) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Powers of Corporation as a liquidator.

**66.** (1) The liquidator shall have the power—

(a) to verify claims of all the creditors;

(b) to take into its custody or control all the assets, property, effects and actionable claims of the specified service provider;

(c) to carry on the business of the specified service provider for its beneficial liquidation as is considered necessary;

(d) subject to section 79, to sell the immovable and movable property and actionable claims of the specified service provider in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified by regulations made by the Corporation;

(e) to draw, accept, make and endorse any negotiable instrument including a bill of exchange, hundi or promissory note in the name and on behalf of the specified service provider, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the specified service provider in the ordinary course of its business;

(f) to take out, in its official name, a letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the specified service provider, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(g) to obtain professional assistance from any person or appoint any professional, in discharge of its duties, obligations and responsibilities and for protection of the assets of the specified service provider;

(h) to appoint an agent to do any business which the liquidator is entitled to do;



(i) to continue the employment of some or all employees of the specified service provider on such terms as may be agreed upon;

(j) to invite and settle claims of creditors (including depositors) and claimants and distribute proceeds in accordance with the provisions of this Act;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of or on the behalf of the specified service provider;

(l) to investigate the financial affairs of the specified service provider to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt, document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for liquidation, distribution of assets and in discharge of its duties and obligations and functions as liquidator;

(n) to apply to the Tribunal for such orders or directions as may be necessary for the liquidation of the specified service provider and to report the progress of the liquidation process to the Tribunal in a manner as may be specified by regulations made by the Corporation;

(o) in respect of a specified service provider which is an insurance company, to reduce the amount of the insurance contracts of such specified service provider or other insurer, upon such terms and conditions as the Corporation deems fit;

(p) subject to the provisions of Chapter XV, engage with the resolution authorities of other jurisdictions for the purpose of giving effect to this Act; and

(q) to perform such other functions as may be prescribed.

(2) The liquidator shall have the power to consult any person entitled to proceeds from liquidation under section 80:

Provided that such consultation shall not be binding on the liquidator:

Provided further that the records of such consultation shall be made available to all other entitled persons not so consulted, in writing.

(3) The Central Government may make rules governing the actions of the Corporation as a liquidator under this section.

**67.** (1) The liquidator shall, for the purposes of liquidation, form an estate of the assets mentioned in sub-section (3), which shall be called the liquidation estate in relation to the specified service provider.

Liquidation estate.

(2) The liquidator shall hold the liquidation estate as a fiduciary.

(3) Subject to sub-section (4), the liquidation estate shall comprise of all assets, including—

(a) any tangible or intangible assets over which the specified service provider has ownership rights, all rights and interests therein as evidenced in the balance sheet of the specified service provider or an information utility or credit information system regulated under any law for the time being in force or records in the registry or any depository recording securities of the specified service provider or by any other means as may be specified by regulations made by the Corporation, and shares held in any subsidiary of the specified service provider;

(b) assets that may or may not be in possession of the specified service provider, including encumbered assets;

(c) assets subject to the determination of ownership by any court or authority;

(d) any asset or its value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(e) any asset of the specified service provider in respect of which a secured creditor has relinquished security interest;

(f) any other property belonging to or vested in the specified service provider from the date of the order of liquidation; and

(g) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate and shall not be used for recovery in the liquidation, namely:—

(a) assets owned by a third party which are in possession of the specified service provider, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with the appropriate regulator;

(b) assets held by a specified service provider as collateral which are subject to netting, set-off or adjustment in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a specified service provider as the case may be, provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

(d) assets of any Indian or foreign subsidiary of the specified service provider; or

(e) any other assets as may be specified by regulations made by the Corporation in consultation with the appropriate regulator.

(5) Notwithstanding anything in sub-section (3) and sub-section (4), the following shall not be included in the liquidation estate and shall not be used for recovery in the liquidation, namely:—

(a) any collateral or assets collected in terms of any law applicable to central counterparties;

(b) assets of a member of a central counterparty or the client of a member of a central counterparty held by the central counterparty or by an insured service provider, or a depository, or a custodian on behalf of the central counterparty and such assets may be subject to netting and set-off in multi-lateral trading or clearing transactions in accordance with the provisions of the rules, bye-laws, and regulations of the central counterparty.

(6) The payments and recoveries for the matters enumerated in sub-section (5) shall be in accordance with the rules, bye-laws or regulations of the central counterparty and such liabilities shall be discharged before making any distributions under section 80.

Power of  
liquidator to  
access  
information.

**68.** (1) Notwithstanding anything in any other law for the time being in force, the liquidator shall have the power to access any information system for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the specified service provider from the following sources, namely:—

(a) an information utility;

(b) credit information systems regulated under any law for the time being in force;

(c) any agency of the Central Government, State Government or local Government, including any registration authorities;

(d) information systems for financial and non-financial liabilities regulated under any law for the time being in force;

(e) information systems for securities and assets posted as security interest regulated under any law for the time being in force; or

(f) any other source as may be specified by regulations made by the Corporation.

(2) The creditors of the specified service provider may require the liquidator to provide them with any financial information relating to such specified service provider in such form and manner as may be specified by regulations made by the Corporation.

(3) The liquidator shall provide the information referred to in sub-section (2) to such creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

**69.** (1) The liquidator shall receive or collect the claims of all consumers and creditors in such manner as may be specified by regulations made by the Corporation, within a period of ninety days from the date of the commencement of the liquidation process.

Consolidation  
of claims.

(2) A financial creditor (other than a depositor) may submit a claim to the liquidator by providing a record of such claim with an information utility:

Provided that where the information relating to such claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner as provided for the submission of claims for the operational creditor under sub-section (3).

(3) A depositor or operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by regulations made by the Corporation:

Provided that every depositor of a specified service provider which is a banking institution shall be deemed to have submitted its claim for the amount shown in the books of the specified service provider as standing to its credit and, notwithstanding anything to the contrary in the Companies Act, 2013 or this Act or any other law for the time being in force, the liquidator shall presume such claims to have been proved, unless it has reason for doubting its correctness.

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(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of the financial debt in the manner as provided in sub-section (2) and to the extent the operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

(6) For the purposes of this section, the expressions "financial creditor", "operational creditor", "financial debt" and "operational debt" shall have the meanings respectively assigned to them in section 5 of the Insolvency and Bankruptcy Code, 2016.

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**70.** (1) The liquidator shall verify the claims submitted under section 69 within such period and in such manner as may be specified by regulations made by the Corporation.

Verification  
of claims.

(2) The liquidator may require any creditor or the specified service provider or any other person to produce any other document or evidence which in the opinion of the liquidator is necessary for the purpose of verifying the whole or any part of the claim.

**71.** Notwithstanding anything in any other law for the time being in force, the Tribunal may, if it appears to it to be necessary or expedient so to do at any time after the appointment of the liquidator, make a call on and order payment by any contributory, if such contributory has been placed on the list of contributories by the liquidator and has not appeared to dispute his liability.

Special  
provisions to  
make calls on  
contributories.

Manner of payment of deposit insurance by Corporation in case of liquidation.

**72.** (1) Where an insured service provider has been ordered to be liquidated and the Corporation has been appointed as a liquidator under section 63, or where a liquidator, by whatever name called, has been appointed for an insured service provider, which is an eligible co-operative bank, the Corporation or the liquidator, as the case may be, shall prepare, with the least possible delay and in any case not later than ninety days from the date of its appointment as liquidator, a list in such form and manner as may be specified by regulations made by the Corporation, showing separately the deposits in respect of each depositor and the amounts of set-off in the same capacity and in the same right as referred to in section 29.

(2) Before the expiry of sixty days from the receipt of such list from the insured service provider, the liquidator shall pay to the depositor, the amount payable under section 29 in respect of the deposit of each depositor—

(i) directly; or

(ii) through such agency as the liquidator may determine.

(3) Any expenses incurred by the liquidator in making payments under sub-section (2) shall be treated as expenses incurred in the liquidation of the insured service provider.

Admission or rejection of claims and payment of deposit insurance.

**73.** (1) The liquidator may, after verification of claims under section 70, admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate the decision of admission or rejection of claims to the depositor, the creditor and the insured service provider within sixty days of such admission or rejection of claims in such manner as may be specified by regulations made by the Corporation.

(3) Where the liquidator has admitted the claims of the depositors under sub-section (1), it shall proceed to pay out any amounts covered under deposit insurance in such manner as may be specified by regulations made by the Corporation.

Appeal against decision of liquidator.

**74.** A creditor or depositor aggrieved by the decision of the liquidator rejecting the claims under section 73 may, within fourteen days of the receipt of the decision, prefer an appeal to the Tribunal:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of fourteen days, but within a further period not exceeding fifteen days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

Determination of valuation of claims.

**75.** The liquidator shall determine the value of claims admitted under section 73 in such manner as may be specified by regulations made by the Corporation.

Documents of specified service provider to be evidence.

**76.** (1) The entries in the books of account or other documents of a specified service provider which is being liquidated shall be admitted in evidence in all legal proceedings, and all such entries may be proved by the production of the books of account or other documents of the specified service provider containing such entries or by the production of a copy of the entries, certified by the liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the specified service provider in his possession.

(2) Notwithstanding anything in the Indian Evidence Act, 1872 all such entries in the books of account or other documents of a specified service provider shall, as against the directors, officers and other employees of the specified service provider in respect of which an order of liquidation has been made, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

77. (1) Where an order has been made for the liquidation of a specified service provider under section 63, the liquidator shall examine whether in its opinion any loss has been caused to the specified service provider since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of any person in the promotion or formation of the specified service provider or of any director or auditor of the specified service provider.

Public examination of directors and auditors.

(2) If after examination under sub-section (1), the liquidator is of the opinion that any promoter or any person who has taken part in the conduct of business of the specified service provider or has been a director or an auditor of the specified service provider should be publicly examined, it may file an application before the Tribunal to hold a public sitting on a date to be appointed for that purpose and thereupon, the Tribunal may direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the specified service provider, or as to his conduct and dealings, provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be examined.

(3) The liquidator shall take part in the examination and for that purpose may, if specifically authorised by the Tribunal in that behalf, avail of such legal assistance as may be directed by the Tribunal.

(4) Any creditor or contributory may also take part in the examination either personally or through any person entitled to appear before the Tribunal.

(5) The Tribunal may put such question to the person examined as it thinks fit.

(6) The person ordered to be examined shall be examined on oath and shall answer all such questions as the Tribunal may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the Tribunal who shall be at liberty to put to him such question as the Tribunal may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if, in the opinion of the Tribunal, he is exculpated from any charges made or suggested against him, the Tribunal may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory as may be necessary.

(9) Where on such examination, the Tribunal is of the opinion, as to whether or not a fraud has been committed,—

(a) that the person, who has been a director of a specified service provider, is not fit to be a director of a specified service provider, or

(b) that the person, who has been an auditor of a specified service provider or a partner of a firm acting as such auditor, is not fit to act as an auditor of a specified service provider or to be a partner of a firm acting as such auditor,

the Tribunal may make an order that the person shall not, without the leave of the Tribunal, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any specified service provider or, as the case may be, act as an auditor of, or be partner of a firm acting as auditors of any specified service provider, for such period not exceeding five years, as may be specified in the order.

78. (1) Where in a proceeding of liquidation under this Act, it appears to the Tribunal that any person, who has taken part in the promotion or formation of, or who is or has been a director, manager, or officer of the specified service provider,—

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the specified service provider; or

Power of Tribunal to assess damages against delinquent directors, etc.

(b) has been guilty of any misfeasance or breach of trust in relation to the specified service provider,

the Tribunal may, on an application made by the liquidator or any creditor or contributor, within the period specified in sub-section (2), inquire into the conduct of the person, and order him to repay or restore the money or property or any part thereof, with interest at such rate, or to contribute such sum to the assets of the specified service provider by way of compensation in respect of such misapplication or retention of any money or property or any misfeasance or breach of trust, in relation to the specified service provider, as the Tribunal considers appropriate:

Provided that where the specified service provider under liquidation is a banking institution, the Tribunal,—

(a) shall make an order against such person to repay and restore the money or property, unless he proves that he is not liable to make the repayment or restoration either wholly or in part;

(b) has reason to believe that a property belongs to that person, whether or not the property is in his name, the Tribunal may, at any time, whether before or after making an order under clause (a), direct the attachment of such property, or such portion thereof, as it considers fit and the property so attached shall remain subject to attachment, unless the owner proves to the satisfaction of the Tribunal that he is the real owner, and the provisions of the Code of Civil Procedure, 1908 relating to attachment of property shall, as far as may be, apply to such attachment. 5 of 1908.

(2) An application under sub-section (1) shall be made within five years from the date of the order of liquidation under section 63, or of the date when the alleged misapplication or retention of any money or property or, misfeasance or breach of trust in relation to the specified service provider, as the case may be, has been noticed, whichever is longer.

(3) This section shall apply, notwithstanding that the matter is one for which the person may be criminally liable.

Secured  
creditor in  
liquidation  
proceedings.

**79.** (1) A secured creditor in the liquidation proceedings may—

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 80; or

(b) notwithstanding anything in sub-section (3) of section 63, realise its security interest in the manner specified under this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved—

(a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by regulations made by the Corporation.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as may be applicable to the security interest being realised, and to the secured creditor, and apply the proceeds to recover the debts due to it.

(5) If in the course of realising a secured asset, any secured creditor faces resistance from the specified service provider or any person connected therewith in taking possession of, selling or otherwise disposing of the security, the secured creditor may make an application to the Tribunal for an order to realise such security interest in accordance with the law for the time being in force.



(6) The Tribunal, on the receipt of an application under sub-section (5), may pass such order as may be necessary to permit a secured creditor to realise security interest.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall—

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of resolution costs (including the costs for liquidation) under clause (b) of sub-section (1) of section 80 due from secured creditors who realise their security interests under this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in section 80.

**80.** (1) Notwithstanding anything in any other law for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified by regulations made by the Corporation, namely:—

Distribution  
of assets.

(a) the sums paid by the Corporation to a depositor of an insured service provider which is covered by deposit insurance;

(b) the resolution costs, including costs for the process of liquidation;

(c) the following debts which shall rank equally between and among the following, namely:—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 79;

(d) wages owed to employees other than workmen for the period of twelve months preceding the date of the commencement of liquidation commencement date;

(e) the following debts which shall rank equally between and among the following, namely:—

(i) amounts due to uninsured depositors;

(ii) such amounts due to insurance policy-holders as may be specified by regulations made by the Corporation;

(f) financial debts owed to unsecured creditors;

(g) the following dues shall rank equally between and among the following, namely:—

(i) any amount due to the Central Government and the State Government, including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(h) any remaining debts and dues;



(i) preference shareholders, if any; and

(j) equity shareholders or partners, as the case may be.

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

(4) For the purposes of this section,—

(a) it is clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts shall be paid in full, or in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and

(b) the expression, "workmen's dues" shall have the same meaning as assigned to it in section 325 of the Companies Act, 2013.

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Dissolution of  
specified  
service  
provider.

**81.** (1) Where the assets of the specified service provider have been completely liquidated, the liquidator shall make an application to the Tribunal for the dissolution of such specified service provider.

(2) The Tribunal shall, on an application made under sub-section (1), order that the specified service provider shall be dissolved from the date of that order and the specified service provider shall be dissolved accordingly.

(3) A copy of the order under sub-section (2) shall, within seven days from the date of such order, be forwarded to the authority with which the specified service provider is registered.

Preferential  
transactions  
and relevant  
time.

**82.** (1) Where the liquidator, is of the opinion that the specified service provider has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Tribunal for avoidance of preferential transactions and for, one or more of the orders referred to in section 83.

(2) A specified service provider shall be deemed to have given a preference, if—

(a) there is a transfer of property or an interest thereof of the specified service provider for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the specified service provider; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 80.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers—

(a) transfer made in the ordinary course of the business or financial affairs of the specified service provider or the transferee;

(b) any transfer creating a security interest in property acquired by the specified service provider to the extent that—

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest and was used by the specified service provider to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the specified service provider receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the specified service provider.

(4) For the purposes of sub-section (3), "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(5) A preference shall be deemed to be given at a relevant time, if—

(a) it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the liquidation commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the liquidation commencement date.

**83.** (1) The Tribunal may, on an application made by the liquidator under sub-section (1) of section 82, by an order,—

Orders in case of preferential transactions.

(a) require any property transferred in connection with the giving of the preference to be vested in the specified service provider;

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security interest created by the specified service provider;

(d) require any person to pay such sums in respect of benefits received by him from the specified service provider to the liquidator, as the Tribunal may direct;

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or operational debts to that person as the Tribunal deems appropriate;

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the specified service provider, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the specified service provider or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator.

(2) For the purposes of this section,—

(a) it is clarified that where a person, who has acquired an interest in property from another person other than the specified service provider, or who has received a benefit from the preference or such another person to whom the specified service provider gave the preference,—

(i) had sufficient information of the initiation or commencement of liquidation process of the specified service provider;

(ii) is a related party,

it shall be presumed that the interest was acquired or the benefit was received otherwise than in good faith unless the contrary is shown;

(b) a person shall be deemed to have sufficient information or opportunity to avail such information if an order of liquidation has been made under section 63.

Avoidance of undervalued transactions.

**84.** (1) If the liquidator, on an examination of the transactions of the specified service provider referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 85, which were undervalued, he shall make an application to the Tribunal to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the specified service provider—

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the specified service provider for a consideration the value of which is significantly less than the value of the consideration provided by the specified service provider, and such transaction has not taken place in the ordinary course of business of the specified service provider.

Relevant period for avoidable transactions.

**85.** (1) In an application for avoiding a transaction which has been undervalued, the liquidator shall demonstrate that—

(a) such transaction was made with any person within the period of one year preceding the liquidation commencement date; or

(b) such transaction was made with a related party within the period of two years preceding the liquidation commencement date.

(2) The Tribunal may require an independent expert to assess evidence relating to the value of the transactions mentioned in this section.

Application by creditor in cases of undervalued transactions.

**86.** (1) Where an undervalued transaction has taken place and the liquidator has not reported it to the Tribunal, a creditor, Member or a partner of a specified service provider, as the case may be, may make an application to the Tribunal to declare such transactions void and reverse their effect in accordance with this Chapter.

(2) Where the Tribunal, after examination of the application made under sub-section (1), is satisfied that—

(a) undervalued transactions had occurred; and

(b) the liquidator after having sufficient information or opportunity to avail information of such transactions did not report such transactions to the Tribunal,

it shall pass an order restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 84 and section 87.

Order in cases of undervalued transaction.

**87.** The order of the Tribunal declaring the undervalued transactions as void under sub-section (1) of section 84 may provide for the following, namely:—

(a) require any property transferred as part of the transaction, to be vested in the specified service provider;

(b) release or discharge (in whole or in part) any security interest granted by the specified service provider;

(c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator, as the Tribunal may direct; or

(d) require the payment of such consideration for the transaction as may be determined by an independent expert.

**88.** Where the specified service provider has entered into an undervalued transaction as referred to in sub-section (2) of section 84 and the Tribunal is satisfied that such transaction was deliberately entered into by such specified service provider—

Transactions defrauding creditors.

(a) for keeping assets of the specified service provider beyond the reach of any person who is entitled to make a claim against the specified service provider; or

(b) in order to adversely affect the interests of such person in relation to the claim,

the Tribunal shall make an order—

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions:

Provided that an order under this section shall not—

(a) affect any interest in property which was acquired from a person other than the specified service provider and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such interest; and

(b) require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

**89.** (1) Where the specified service provider has been a party to an extortionate credit transaction involving a financial or operational debt during the period within two years preceding the liquidation commencement date, the liquidator, may make an application for avoidance of such transaction to the Tribunal if the terms of such transaction required exorbitant payments to be made by the specified service provider.

Extortionate credit transactions.

(2) The Corporation may specify by regulations the circumstances in which a transaction shall be covered under sub-section (1).

(3) For the purposes of this section, it is clarified that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall not be considered as an extortionate credit transaction.

**90.** Where the Tribunal after examining the application made under sub-section (1) of section 89 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the specified service provider, it shall, by an order—

Orders of Tribunal in respect of extortionate credit transactions.

(a) restore the position as it existed prior to such transaction;

(b) set aside the whole or part of the debt created on account of the extortionate credit transaction;

(c) modify the terms of the transaction;

(d) require any person who is, or was, a party to the transaction to repay any amount received by such person; or

(e) require any security interest that was credited as part of the extortionate credit transaction to be relinquished in favour of the liquidation estate.

Assistance by  
related  
parties.

**91.** (1) On being appointed as a liquidator or an administrator of a specified service provider, the Corporation may, by an order in writing, require parties related to the specified service provider to continue to provide such services or honour such contracts as the Corporation may direct, for a period not exceeding two years from the date of such appointment, for effective resolution of the specified service provider.

(2) For the purposes of this section, the expression "related party" includes a "holding company", "subsidiary company" or "associate company" as defined in the Companies Act, 2013 and any other person with similar relationship with the specified service provider.

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Assistance  
and co-  
operation.

**92.** (1) The appropriate regulator shall provide necessary assistance and co-operation to the Corporation in the discharge of its duties under this Chapter.

(2) For the purpose of enabling the Corporation to take into its custody or under its control, all property, effects and actionable claims to which a specified service provider under liquidation, is or appears to be entitled, the Corporation may request in writing the District Magistrate within whose jurisdiction any property, books of account or other documents of such specified service provider may be situated or be found, to take possession thereof, and the District Magistrate shall, on such request,—

(a) take possession of such property, books of account or other documents; and

(b) forward them to the Corporation.

(3) Where any property or effects of the specified service provider under liquidation, are in the possession of the District Magistrate, such Magistrate shall, on an application made by the Corporation, sell such property and effects and forward the net proceeds of the sale to the Corporation:

Provided that such sale shall, as far as practicable, be by public auction.

(4) For the purpose of securing compliance with the provisions of sub-section (3), the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary and shall provide necessary assistance and co-operation to the Corporation in the discharge of its duties under this Chapter.

## CHAPTER XIII

### VOLUNTARY LIQUIDATION AND WINDING-UP

Voluntary  
liquidation.

**93.** (1) A specified service provider classified in the category of low or moderate risk to viability may close its business and liquidate itself voluntarily under section 59 of the Insolvency and Bankruptcy Code, 2016, subject to such conditions as may be specified by regulations made by the appropriate regulator:

31 of 2016.

Provided that if the risk to viability classification of such specified service provider is changed to material or higher category at any stage of such voluntary liquidation proceedings, the proceedings shall lapse and the specified service provider shall be resolved in accordance with the provisions of this Act.

(2) A specified service provider classified in the category of material or higher risk to viability shall not be eligible for voluntary liquidation.

Winding-up  
under section  
271 of the  
Companies  
Act, 2013.

**94.** (1) Notwithstanding anything in the Companies Act, 2013, the Tribunal shall not entertain any application for winding-up of a specified service provider or bridge service provider under section 271 of that Act, unless the Tribunal obtains a report from the Corporation stating that such a specified service provider should be liquidated:

18 of 2013.

Provided that, where the specified service provider is classified in the category of low, moderate or material risk to viability, the Corporation shall require the appropriate regulator to furnish the report for submission before the Tribunal.

(2) Upon submission of the report by the Corporation, if the Tribunal is satisfied that the specified service provider has to be liquidated, it shall appoint the Corporation as the liquidator, and the specified service provider shall be liquidated as per the provisions of this Act.

## CHAPTER XIV

### FOREIGN RESOLUTION ACTION

**95.** (1) The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Act.

Power to enter into memorandum of understanding.

(2) Without prejudice to sub-section (1), the Corporation may, with the prior approval of the Central Government, enter into memorandum of understanding with such international organisations or other authorities outside India, which have functions similar to those of the Corporation, for sharing information on reciprocal basis to the extent permissible under any law for the time being in force in India.

(3) Subject to the provisions of this Act or any other law for the time being in force in India, the information received by the Corporation from the authorities referred to in sub-section (2), shall be treated as confidential.

(4) The Corporation shall require the authority outside India to maintain confidentiality of the information furnished by it under the memorandum of understanding and not to disclose the information to any person or authority:

Provided that in case the laws of the country of the authority outside India do not provide immunity from disclosure of the information furnished by the Corporation and such authority is directed by a court of law, Tribunal or other authority to disclose such information, the said authority shall inform the Corporation forthwith of such direction.

(5) Subject to the provisions of this Act, the Corporation shall assist on a reciprocal basis the authority outside India with whom it has entered into a memorandum of understanding under sub-section (2), in the resolution of a branch office, situated in India and which is a specified service provider, of a person situated in the country of such authority.

(6) Notwithstanding anything in this Act or any law for the time being in force in India, if in the course of resolution or liquidation proceedings, as the case may be, under this Act, the Corporation is of the opinion that assets of the specified service provider, are situated in a country outside India with which reciprocal arrangements have been made under this section, the Corporation may make an application to the Tribunal that the evidence or action relating to such assets is required in connection with such process or proceeding.

(7) The Tribunal on receipt of an application under sub-section (6) and, on being satisfied that evidence or action relating to assets under that sub-section is required in connection with resolution or liquidation proceedings, may issue a letter of request to a court or an authority of such country competent to deal with such request.

**96.** (1) Subject to any agreement or memorandum of understanding referred to in section 95, if the Corporation receives a written request from a foreign resolution authority for the recognition of a foreign resolution action in relation to,—

Recognition and enforcement or refusal of recognition and enforcement of foreign resolution actions.

(a) a body corporate incorporated outside India, whose branch office is a specified service provider; or

(b) a holding company of such body corporate which is a specified service provider,

it may, with the prior approval of the Central Government, make a recognition and enforcement order, recognising such resolution action or a part thereof in accordance with this section.

(2) A recognition and enforcement order under sub-section (1) shall be made after consultation with the appropriate regulator, and shall be subject to such conditions as may be specified in the order.



(3) Where the Corporation recognises a resolution action and makes an order under sub-section (1), it shall, within seven days of such order, publish the recognition and enforcement order in such manner as may be specified by regulations made by the Corporation, and send copies thereof to the specified service provider, the appropriate regulator, the appropriate resolution authority of the body corporate incorporated outside India, and to the Central Government.

(4) The foreign resolution action referred to in sub-section (1) shall not be recognised, unless the following conditions are satisfied, namely:—

(i) the foreign resolution action shall not be in derogation of the safeguards contained in section 55 of this Act in relation to the Indian stakeholders affected by such resolution action;

(ii) subject to any netting or set-off in accordance with the provisions of the Reserve Bank of India Act, 1934, the Securities Contracts (Regulation) Act, 1956 or the Payment and Settlement Systems Act, 2007, as applicable, the creditors of the specified service provider which is a branch office in India of a body corporate incorporated outside India shall have the first charge on the unencumbered assets of the specified service provider in relation to which such recognition and enforcement order is being made.

2 of 1934.  
42 of 1956.  
51 of 2007.

(5) Without prejudice to sub-sections (1), (2) (3) and (4) of section 95, the Corporation may refuse to recognise a resolution action if in the opinion of the Corporation—

(i) the action may have an adverse impact on the financial stability of India;

(ii) the action is not consistent with the objectives of this Act;

(iii) the action is not consistent with the laws of India;

(iv) the action is opposed to the public policy of India;

(v) independent resolution action under the provisions of this Act is necessary to achieve the objectives of this Act.

(6) For the purposes of this section,—

(a) "holding company", in relation to a body corporate means a company of which such body corporate referred to in sub-section (1) is a subsidiary through any number of layers;

(b) "layer" in relation to a holding company, means its subsidiary or subsidiaries.

Rights of local  
creditors in  
certain cases.

**97.** (1) Notwithstanding anything in this Act, but subject to any agreement or memorandum of understanding referred to in section 95, in the event of a foreign resolution action, including liquidation, in respect of a body corporate incorporated outside India, whose branch office in India is a specified service provider,—

(a) such branch office may be classified in the category of critical risk to viability by the appropriate regulator, and resolved in accordance with the provisions of this Act; and

(b) subject to any netting or set-off in accordance with the Reserve Bank of India Act, 1934, the Securities Contracts (Regulation) Act, 1956 or the Payment and Settlement Systems Act, 2007, as applicable, the creditors of such specified service provider which is a branch office in India of a body corporate incorporated outside India shall have first charge on the unencumbered assets of the specified service provider for the purpose of resolution or liquidation under this Act:

2 of 1934.  
42 of 1956.  
51 of 2007.

Provided that where a body corporate incorporated outside India has not entered into resolution or liquidation, but its branch office in India, being a specified service provider, has been classified in the category of critical risk to viability under section 45 and is being resolved under this Act, the creditors of such branch office shall, subject to any agreement or memorandum of understanding referred to in section 95, have first charge under clause (b).



(2) For the purposes of this Chapter, the expression "foreign resolution action" shall have such meaning as may be determined by the Corporation in consultation with the appropriate regulator.

## CHAPTER XV

### OFFENCES AND PENALTIES

**98.** Where any officer of the specified service provider has,—

Punishment for concealment of property.

(i) within the twelve months immediately preceding the date of the order of liquidation,—

(a) wilfully concealed any property or part of such property of the specified service provider or concealed any debt due to, or from, the specified service provider, of the value of ten thousand rupees or more; or

(b) fraudulently removed any part of the property of the specified service provider of the value of ten thousand rupees or more; or

(c) wilfully concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property of the specified service provider or its affairs, or

(d) wilfully made any false entry in any book or paper affecting or relating to the property of the specified service provider or its affairs; or

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the property of the specified service provider or its affairs; or

(f) wilfully created any security interest over, transferred or disposed of any property of the specified service provider which has been obtained on credit and has not been paid for unless such creation, transfer or disposal was in the ordinary course of the business of the specified service provider; or

(g) wilfully concealed the knowledge of the doing by others of any of the acts mentioned in sub-clauses (c), (d) or (e); or

(ii) at any time after the date of the order of liquidation, committed any of the acts mentioned in sub-clauses (a) to (f) of clause (i) or has the knowledge of the doing by others of any of the things mentioned in sub-clauses (c) to (e) of the said clause; or

(iii) at any time after the date of the order of liquidation, taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed,

such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the specified service provider.

**99.** On or after the date of the order of liquidation, if an officer of the specified service provider or the specified service provider—

Punishment for transactions defrauding creditors.

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the specified service provider;

(b) has concealed or removed any part of the property of the specified service provider within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the specified service provider,

such officer of the specified service provider or the person in control of such specified service provider shall be punishable with imprisonment for a term which shall not be less

than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both:

Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the date of the order of liquidation, or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the specified service provider.

Punishment  
for misconduct  
on liquidation.

**100.** On or after the date of the order of liquidation under section 63, where an officer of the specified service provider or the bridge service provider, as the case may be,—

(a) does not disclose to the Corporation all the details of property of the specified service provider or the bridge service provider, and details of transactions thereof, or any such other information as the Corporation may require; or

(b) does not deliver to the Corporation all or part of the property of the specified service provider or the bridge service provider in his control or custody and which he is required to deliver; or

(c) does not deliver to the Corporation all books and papers in his control or custody and which he is required to deliver; or

(d) fails to inform the Corporation the information in his knowledge that a debt has been falsely proved by any person during the liquidation; or

(e) prevents the production of any book or paper affecting or relating to the property or affairs of the specified service provider or the bridge service provider; or

(f) accounts for any part of the property of the specified service provider or the bridge service provider by fictitious losses or expenses, or if he has attempted to so account at any meeting of the creditors of the specified service provider or the bridge service provider within the twelve months immediately preceding the date of the order of liquidation,

he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section, if he proves that he had no intent to do so in relation to the state of affairs of the specified service provider.

Punishment  
for  
falsification of  
books of  
specified  
service  
provider.

**101.** On and after the date of the order of liquidation, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of account or document belonging to the specified service provider with an intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Punishment for  
wilful and  
material  
omissions from  
statements  
relating to  
affairs of  
specified  
service  
provider.

**102.** Where an officer of the specified service provider makes any material and wilful omission in any statement relating to the affairs of the specified service provider, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

Punishment for  
contravention  
of prohibition  
made under this  
Act.

**103.** (1) Where the specified service provider or any of its officer contravenes the provisions of sub-section (5) of section 45 or section 63, any such officer who knowingly or wilfully committed or authorised or permitted such contravention, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to

five years or with fine which shall not be less than one lakh rupees, but which may extend to three lakh rupees, or with both.

(2) Where any creditor contravenes the provisions of sub-section (5) of section 45 or sub-section (3) of section 63, any person who knowingly and wilfully authorised or permitted such contravention by a creditor, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

**104.** If any person fails without reasonable cause or refuses—

Punishment for interference in investigation.

(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record or to furnish any information which it is his duty under sub-section (2) or sub-section (3) of section 14 to furnish; or

(b) to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him in pursuance thereof by the Investigating Authority under sub-section (4) of section 14; or

(c) to sign the notes of any examination referred to in sub-section (5) of section 14,

such person shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty-five crore rupees, or with both, and if the contravention is a continuing one, with a further fine which may extend to ten lakh rupees for every day after the first during which the contravention continues.

**105.** (1) Where any employee, manager or person in control of a specified service provider,—

Other offences.

(a) transfers any assets of the specified service provider in violation of any order of the appropriate regulator or the Corporation under this Act;

(b) transfers any assets of the specified service provider after such specified service provider has been classified in the category of imminent risk to viability;

(c) transfers any assets of the specified service provider before it is classified in the category of imminent risk to viability, with the objective of reducing the amount of assets available to the Corporation as an administrator or liquidator;

(d) refuses to provide information regarding the specified service provider in liquidation when required to do so by the Corporation; or

(e) conceals or provides false information regarding a specified service provider in resolution when required by the Corporation to so provide,

such employee, manager or person in control of the specified service provider shall, in addition to the payment of the amount disgorged, if any, be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, and with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees.

(2) If any person,—

(a) assists a person in committing any offence under sub-section (1);

(b) knowingly accepts or deals in any asset of a specified service provider which is in resolution; or

(c) causes any asset of a specified service provider in resolution to be hidden from the Corporation,

such person shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, and with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees.

(3) Whoever in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment which may extend to three years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

(4) If any person fails to produce any book, account or other document, or to furnish any statement or information which under the provisions of this Act, it is his duty to produce or furnish, he shall be punishable with a fine which may extend to two thousand rupees in respect of each offence and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day after the first during which the contravention continues.

(5) Where a specified service provider,—

(a) fails to intimate a material change in the restoration plan or a resolution plan under section 41; or

(b) fails to modify and resubmit a restoration plan or the resolution plan under section 41,

every officer in default of such specified service provider shall be punishable with fine which may extend to one crore rupees or imprisonment for a term which may extend to five years or with both.

Offences by  
companies.

**106.** (1) Where an offence has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary, or other officer or employee of the company, such director, manager, secretary, other officer or employee shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Any offence punishable under this Act shall be deemed to have been committed at the place where the registered office or the principal place of business as the case may be, of the company in India, is situated.

*Explanation.*—For the purposes of this section,—

(a) “company” means any body corporate and includes a Corporation, statutory body, a co-operative society or a firm or other association of individuals; and

(b) “director”, in relation to a firm means a partner in the firm.

Penalty for  
contravention  
of provisions  
of this Act or  
rules and  
regulations  
made  
thereunder.

**107.** (1) Any person who deliberately contravenes any of the provisions of this Act or the rules or regulations made under this Act, shall be liable to a penalty which shall not be less than the amount of unlawful gains accrued out of such contravention, but which may extend to three times the said amount of unlawful gains or twenty-five crore rupees, whichever is higher.

(2) Any person who by gross negligence or any person related to the specified service provider, who violates any order, regulation or rule under this Act, shall be liable to a penalty which may extend up to two times the amount of unlawful gains accrued out of such violation or extend up to five crore rupees, whichever is higher.

**108.** (1) Any specified service provider which fails to submit a restoration plan or resolution plan under section 38 shall be liable to a penalty which may extend to twenty-five crore rupees.

Penalty in relation to restoration and resolution plans.

(2) Any specified service provider which fails to update a restoration plan or resolution plan under section 41 shall be liable to a penalty which may extend to five crore rupees.

(3) Any systemically important financial institution which fails to update a restoration plan or a resolution plan under section 41 shall be liable to a penalty which may extend to ten crore rupees.

(4) Any specified service provider which fails to intimate a material change in the restoration plan or a resolution plan under section 41 shall be liable to a penalty which may extend to ten crore rupees.

(5) Any systemically important financial institution which fails to intimate a material change shall be liable to a penalty which may extend to twenty-five crore rupees.

(6) Any specified service provider which fails to modify and resubmit a restoration plan or the resolution plan under section 41 shall be liable to a penalty which may extend to ten crore rupees.

(7) Any systemically important financial institution which fails to modify and resubmit its restoration plan or the resolution plan under section 41 shall be liable to a penalty which may extend to twenty-five crore rupees.

**109.** (1) For the purposes of imposition of penalty under section 107 or section 108, the Corporation or the appropriate regulator, as the case may be, shall appoint an officer of such rank and in such manner as may be prescribed, to be an adjudicating officer for holding an inquiry in the prescribed manner after giving the relevant specified service provider or the person a reasonable opportunity of being heard for the purpose of imposing any penalty.

Power to adjudicate penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, after being satisfied that the person has failed to comply with the provisions of section 107 or section 108, may impose such penalty as the adjudicating officer thinks fit in accordance with the provisions of this section.

(3) The Corporation or the appropriate regulator, as the case may be, may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in accordance with the provisions of this Act, it may, after making or causing to be made such inquiry as it deems necessary, pass an order modifying the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the relevant specified service provider or the person has been given an opportunity of being heard in the matter:

Provided further that nothing in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 111, whichever is earlier.

(4) While adjudging the quantum of penalty under this section, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the nature and seriousness of the violation committed by the relevant specified service provider or person;

(b) the consequences and impact of the violation including the extent of benefit or unfair advantage gained by the relevant specified service provider or person or loss caused or likely to be caused to other persons as a result of the violation;

(c) the amount of loss caused to a consumer or a group of consumers as a result of the default;

(d) the conduct of the relevant specified service provider or person after discovery of the occurrence of the violation;

(e) the repetitive nature of the default;

(f) the deliberate, reckless or negligent nature of the contravention;

(g) offences committed by the relevant specified service provider or person under this Act.

Recovery of  
penalty under  
this Chapter.

**110.** If any person fails to comply with an order issued under this Chapter requiring him to pay any amount by way of penalty, the Corporation may, by order in writing, recover the amount of penalty in accordance with the provisions of the Second Schedule to the Income-tax Act, 1961.

43 of 1961.

Appeal  
against order  
of penalty.

**111.** (1) Any person aggrieved by an order imposing penalty under section 109 may prefer an appeal to the Tribunal.

(2) An appeal under this section shall be filed within a period of forty-five days from the date on which a copy of the order made by the Corporation or the appropriate regulator is received by the aggrieved person and shall be in such form and manner and be accompanied by such fee as may be prescribed:

Provided that the Tribunal may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

Trial of  
offences by  
Special Court.

**112.** (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, all offences under this Act shall be triable by the Special Court established under section 435 of the Companies Act, 2013.

2 of 1974.

18 of 2013.

(2) No court shall take cognizance of any offence under this Act, except on the complaint in writing made by the Central Government, Corporation or any person authorised by the Central Government in this behalf.

(3) Save as provided under this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

2 of 1974.

(4) Notwithstanding anything in the Code of Criminal Procedure, 1973, where the complainant under sub-section (2) is the Central Government or Corporation or an officer authorised by the Central Government, the presence of such officer before the court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

2 of 1974.

Appeal and  
revision.

**113.** The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

2 of 1974.



## CHAPTER XVI

## COMPENSATION

**114.** (1) If the outcome of a resolution action of the Corporation is not in consonance with the safeguard for applying methods of resolution specified in clause (b) of sub-section (1) of section 55, any person aggrieved by such action may, within sixty days of completion of the resolution, make an application for compensation to the Tribunal.

Application and appointment of valuer.

(2) The Tribunal shall, within fifteen days of the receipt of the application under sub-section (1), appoint a registered valuer as an independent valuer for the purpose of this Chapter, subject to such criteria as may be prescribed.

(3) Upon appointment under sub-section (2), the independent valuer shall assess whether the applicant has received less favourable treatment in resolution than he would have in the event of liquidation of the specified service provider in accordance with Chapter XII.

(4) For the purposes of this Chapter, the expression, "registered valuer" means a person registered as such in accordance with the Companies Act, 2013 and the rules made thereunder.

18 of 2013.

**115.** The Corporation and the specified service provider shall provide such records, documents and information to the independent valuer as may be required for the purposes of this Chapter.

Access to information.

**116.** (1) The independent valuer appointed under section 114 shall, within sixty days from the date of appointment, submit a report to the Tribunal setting out its assessment of whether any compensation is to be awarded to the applicant.

Valuation report.

(2) The copies of the report submitted under sub-section (1) shall be forwarded, within seven days of its submission, to the applicant, the specified service provider, the Corporation, and the appropriate regulator.

(3) On receipt of the valuation report, where the Tribunal is of the opinion that—

(i) the valuation report was not prepared in accordance with this Chapter; or

(ii) the valuer should have had regard to any additional circumstances not taken into account in the valuation report,

the Tribunal, may by an order in writing, direct the valuer to reconsider the valuation report or any aspect thereof and submit a revised report or replace the valuer, and pass such other orders as may be required.

**117.** (1) The independent valuer shall not divulge any information relating to any specified service provider, its consumers, the Corporation, or the appropriate regulator except as required under any other law, or when so authorised by this Act.

Confidentiality.

(2) The obligation to maintain confidentiality under this section shall continue after the independent valuer has ceased to perform his functions under this Chapter.

**118.** (1) The Tribunal may, within thirty days from the receipt of the valuation report under section 116, if it is satisfied, direct the Corporation to make arrangements to pay such compensation to the applicant from the Corporation Resolution Fund, as the Tribunal deems fit.

Award of compensation.

(2) The Corporation shall pay to the applicant amount of compensation awarded under sub-section (1) within seven days from the receipt of the order.

**119.** (1) The applicant or the Corporation aggrieved by the decision of the Tribunal under section 118 may, within sixty days of such decision, prefer an appeal to the Appellate Tribunal.

Appeal and finality of resolution action.



(2) Any decision under this Chapter shall not affect anything done or any action taken under Chapters IX, X and XI except to the extent provided under this Chapter.

## CHAPTER XVII

### SPECIAL PROVISIONS RELATING TO ELIGIBLE CO-OPERATIVE BANKS

Continuation of deposit insurance for eligible co-operative banks.

**120.** (1) On the commencement of this Act, an eligible co-operative bank as defined under clause (gg) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961, shall, be deemed to be an eligible co-operative bank for the purposes of this Act for a period of two years which may be extended by a further period not exceeding one year, as may be notified by the Central Government or until the law governing such eligible co-operative bank meets with the requirements of this Act, whichever is earlier.

47 of 1961.

(2) If on the expiry of the period specified in sub-section (1), the law for the time being governing the co-operative bank fails to meet the requirements of this Act, the co-operative bank shall cease to be an insured service provider under this Act.

Circumstances in which winding up of eligible co-operative banks can be sought under this Act.

**121.** (1) An eligible co-operative bank may be wound up in the following circumstances, namely:—

(a) the co-operative bank has failed to comply with the requirements specified in section 11 of the Banking Regulation Act, 1949;

10 of 1949.

(b) the co-operative bank has by reason of the provisions of section 22 of the Banking Regulation Act, 1949 become disentitled to carry on banking business in India;

10 of 1949.

(c) the co-operative bank has been prohibited from receiving fresh deposits by an order under sub-section (4) of section 35 of the Banking Regulation Act, 1949 or under clause (b) of sub-section (3A) of section 42 of the Reserve Bank of India Act, 1934;

10 of 1949.

2 of 1934.

(d) the co-operative bank having failed to comply with any requirement of the Banking Regulation Act, 1949 other than the requirements laid down in section 11 thereof, has continued such failure or, having contravened any provision of that Act has continued such contravention beyond such period or periods as may be stipulated in that behalf by the Reserve Bank of India, from time to time, after notice in writing of such failure or contravention has been conveyed to the co-operative bank;

10 of 1949.

(e) the co-operative bank is unable to pay its debts; or

(f) in the opinion of the Reserve Bank of India,—

(i) a compromise or arrangement sanctioned by a competent authority in respect of the co-operative bank cannot be worked satisfactorily with or without modifications; or

(ii) the continuance of the co-operative bank is prejudicial to the interests of its depositors.

(2) Without prejudice to the provisions of any other law for the time being in force, a co-operative bank shall, for the purpose of clause (e) of sub-section (1), be deemed to be unable to pay its debts—

(i) if, on the basis of the returns, statements or information furnished to the Reserve Bank of India in pursuance of the provisions of the Banking Regulation Act, 1949, the Reserve Bank of India is of opinion that the co-operative bank is unable to pay its debts; or

10 of 1949.

(ii) if the co-operative bank has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank of India, or within

five working days if such demand is made elsewhere and, in either case, the Reserve Bank of India certifies in writing that the co-operative bank is unable to pay its debts.

## CHAPTER XVIII

### MISCELLANEOUS

**122.** (1) Where any amount has been paid by the Corporation under section 30 or section 72, or any provision for which has been made under section 32, the Corporation shall furnish to the liquidator or to the insured service provider or to the transferee insured service provider, as the case may be, information as regards the amount so paid or provided for.

Repayment of amount to Corporation.

(2) On receipt of the information under sub-section (1), notwithstanding anything to the contrary in any other law for the time being in force,—

(a) the liquidator shall, within such period and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, payable by him in respect of any deposit, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit;

*Explanation.*—Where the Corporation has been appointed as the liquidator under section 63, repayment to the Corporation may be by way of an adjustment to the funds of the Corporation in such manner as may be specified by regulations made by the Corporation;

(b) the insured service provider or, the transferee insured service provider, as the case may be, shall within such period and in such manner as may be prescribed, repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in section 30, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit.

**123.** Every Member, officer or employee, or independent valuer or any other person whose services are utilised by the Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

Declaration of fidelity.

**124.** (1) The Corporation or the appropriate regulator shall not divulge any information relating to any specified service provider or its consumers, except as otherwise required by section 128, or under any other law for the time being in force, or when so authorised by this Act.

Disclosure of information.

(2) Notwithstanding anything in any other law for the time being in force, no court, tribunal or other authority shall compel the Corporation or the appropriate regulator to produce, or to give information on any inspection relating to a specified service provider or its consumers, by the Corporation, or the appropriate regulator, as the case may be, under this Act.

**125.** (1) Every Member shall be indemnified by the Corporation against all losses and expenses incurred by him in, or in relation to, the discharge of his duties under this Act except such as have been caused by his own wilful act or default.

Indemnity of Members.

(2) A Member shall not be responsible for any other Member or for any other officer or other employee of the Corporation, or for any loss or expenses resulting to the Corporation from the insufficiency or deficiency of value of or title to any property or security acquired or taken on behalf of the Corporation or the wrongful act of any debtor or any person under obligation to the Corporation or anything done in good faith in the execution of the duties of his office or in relation thereto.

Protection of  
action taken  
under this Act.

**126.** No suit or other legal proceeding shall lie against the Corporation or the appropriate regulator, or any Member or officer of the Corporation or of the appropriate regulator for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulations made thereunder.

Provisions of  
the Competition  
Act, 2002 not  
to apply in  
certain cases.

**127.** Nothing in the Competition Act, 2002, shall apply to any action taken by the Corporation or the appropriate regulator under Chapters X, XI and XII of this Act. 12 of 2003.

Information  
sharing  
between  
appropriate  
regulator and  
Corporation.

**128.** Notwithstanding anything in section 124, the Corporation and the appropriate regulator shall—

(a) share and exchange, supervisory information, including inspection reports, relating to such specified service providers which have been classified in the category of material, imminent or critical risk to viability and in such form and manner as may be specified by regulations made by the Corporation, in consultation with the appropriate regulator, or whenever any material information comes to light:

Provided that the Corporation and the appropriate regulator may share and exchange such information on a reciprocal basis relating to specified service providers which have been classified in the category of low or moderate risk to viability;

(b) hold regular meetings to discuss any matter under this Act;

(c) have the power to enter into memorandum of understanding;

(d) consult each other regarding any cross-border establishment or investment by the specified service providers and the insured service providers; and

(e) keep the supervisory information shared confidential and to restrict the sharing, use and onward disclosure of such information in accordance with the provisions of the arrangements:

Provided that the appropriate regulator shall submit to the Corporation its findings on the inspections and the basis of classification of a specified service provider in any of the categories of risk to viability, in such manner as may be specified by regulations made by the Corporation.

Budget.

**129.** The Corporation shall prepare, in such form and at such time in the financial year as may be prescribed, the budget for the next financial year, showing the estimated receipts and expenditure of the Corporation.

Annual  
report.

**130.** (1) The Corporation shall, as soon as may be, after the end of each financial year, prepare and submit to the Central Government, in such form as may be prescribed, a report giving an account of its activities during that financial year and the report shall also give an account of the activities which are likely to be undertaken by the Corporation during the next financial year.

(2) The Central Government shall cause such report to be laid before both Houses of Parliament, as soon as may be, after it is received.

Power of  
Central  
Government  
to supersede  
Corporation.

**131.** (1) If at any time the Central Government is of the opinion,—

(a) that on account of a grave emergency, the Corporation is unable to discharge the functions and duties imposed on it by or under this Act;

(b) that the Corporation has persistently defaulted in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default, the financial position of the Corporation or the administration of the Corporation has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest to do so, the Central Government, may, by notification, supersede the Corporation for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give reasonable opportunity to the Corporation to show cause as to why it should not be superseded and shall consider the explanations and objections, if any, of the Corporation.

(2) Upon the publication of a notification under sub-section (1), superseding the Corporation,—

(a) all the Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Corporation shall, until the Corporation is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Corporation shall, until the Corporation is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Corporation by a fresh appointment and in such case the Members who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time before the expiry of the period of supersession, take action under this section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before both Houses of Parliament in the immediate subsequent session of Parliament.

Power to exempt central counterparties from application of certain provisions of this Act.

**132.** (1) Notwithstanding anything to the contrary in this Act, the Central Government, on being satisfied that it is necessary to do so in the interest of management or operation of any central counterparty or in public interest for ensuring the stability of the financial system, may, by notification direct that any of the provisions of this Act (other than section 142) or any notification or order issued or direction given thereunder (other than the provisions relating to the making of rules or regulations), specified in the notification—

(a) shall not apply to a central counterparty or a class of central counterparties; or

(b) shall apply to a central counterparty or a class of central counterparties with such exceptions, modifications and adaptations, as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Bar of jurisdiction.

**133.** Unless otherwise provided in this Act, no court or other tribunal shall have jurisdiction to entertain or adjudicate upon any matter which the Corporation, the appropriate regulator, the Tribunal or the Appellate Tribunal is empowered to decide or determine under this Act and no court or tribunal shall grant any injunction in respect of any actions proposed or reverse any such action.

Members, officers and employees of Corporation to be public servants.	<b>134.</b> The Chairperson, Members, officers and other employees of the Corporation shall, while acting or purporting to act in pursuance of the provisions of this Act, or of any rule or regulation made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.	45 of 1860
Amounts collected as penalties.	<b>135.</b> Any amount collected as a penalty under this Act, shall be credited to the Consolidated Fund of India.	
Exemption from tax on income, profits and gains.	<b>136.</b> Notwithstanding anything in the Income-tax Act, 1961, the Finance Act, 1994 or any other law for the time being in force, the Corporation shall not be liable to pay income-tax, or any other tax with respect to its income, expenditure, profits or gains, or the services provided to or received by the Corporation.	43 of 1961. 32 of 1994.
Provisions of this Act to override other laws.	<b>137.</b> (1) Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith in any other law for the time being in force or any instrument having effect by virtue of any law for the time being in force other than this Act.  (2) Without prejudice to sub-section (1), the provisions of this Act shall override the provisions of any other law for the time being in force in relation to resolution or liquidation of a specified service provider notwithstanding anything to the contrary in such law:  Provided that nothing in this Act, other than section 47, shall affect the application of the Payment and Settlement Systems Act, 2007 and the Securities Contract Regulation Act, 1956 or regulations made thereunder, in respect of the central counterparties.	51 of 2007. 42 of 1956.
Information utility.	<b>138.</b> Notwithstanding anything to the contrary in the Insolvency and Bankruptcy Code, 2016, the provisions relating to the information utilities under this Act shall apply to the specified service providers in such manner as may be specified by regulations made by the Corporation.	31 of 2016.
Liquidation of the Corporation.	<b>139.</b> (1) Nothing in the Companies Act, 2013 relating to liquidation shall apply to the liquidation of the Corporation under this Act.  (2) The Corporation shall not be placed in liquidation save by order of the Central Government and in such manner as that Government may direct in consultation with the Insolvency and Bankruptcy Board of India, established under the Insolvency and Bankruptcy Code, 2016:  Provided that the Central Government and the Insolvency and Bankruptcy Board of India may be guided by the liquidation process under the Insolvency and Bankruptcy Code, 2016.  (3) On the liquidation of the Corporation,—  (a) the outstanding assets of the Corporation insofar as they relate to the Corporation Insurance Fund shall be distributed among the insured service providers in such manner and in such proportion as may be determined by the Central Government having regard to the amount of premium paid by them during any prescribed period or the deposits of the said insured service providers as on the date of liquidation of the Corporation or other relevant circumstances;  (b) the remaining outstanding assets of the Corporation shall be transferred to the Central Government.	18 of 2013.  31 of 2016.  31 of 2016.
Power to make rules.	<b>140.</b> (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.  (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—	

(a) the salaries and allowances and other terms and conditions of service of, the Chairperson and Members (other than *ex officio* Members), under sub-section (7) of section 4;

(b) any other powers and functions of the Corporation under clause (g) of sub-section (1) of section 13;

(c) any other matter on which the Corporation may have powers under clause (f) of sub-section (2) of section 13;

(d) the form and manner of the annual statement of accounts, under sub-section (1), and the intervals in which such accounts shall be audited under sub-section (2) of section 24;

(e) the criteria for designation of a financial service provider as a systemically important financial institution under sub-section (1) of section 25;

(f) the other matters which shall be taken into consideration while prescribing criteria for designation of a systemically important financial institutions under clause (f) of sub-section (3) of section 25;

(g) the form and manner of submission of report of utilisation of the any amount from the Corporation Insurance Fund under sub-section (7) of section 29;

(h) the form and manner of the report under sub-section (8) of section 52;

(i) the other functions of the administrator under clause (b) of sub-section (1) of section 59;

(j) the other functions to be performed by the liquidator under clause (g) of sub-section (1), and the rules governing the actions of the Corporation as liquidator under sub-section (3), of section 66;

(k) the rank of officer to be appointed as an adjudicating officer and the manner of making inquiry for adjudication of penalty under sub-section (1) of section 109;

(l) the form and manner of filing of appeal and the fee to be accompanied with it under sub-section (2) of section 111;

(m) the criteria for appointment of valuer under sub-section (2) of section 114;

(n) the form and manner of repayment under clause (a) of sub-section (2) of section 122;

(o) the form and the time for preparation of the budget by the Corporation under section 129;

(p) the form for preparation of the annual report by the Corporation under sub-section (1) of section 130;

(q) any other matter which is required to be, or may be prescribed, or in respect of which any provision is to be or may be made by rules.

**141.** (1) The Corporation or the appropriate regulator may, as the case may be, by notification, make regulations not inconsistent with this Act and the rules made thereunder for carrying out the provisions of this Act.

Power to  
make  
regulations.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(i) the time and place of meeting of the Corporation and the procedure to be followed in regard to the transaction of business at such meetings (including quorum at such meetings) under sub-section (1) of section 8;



(ii) the salary and allowances payable to and other terms and conditions of service of, such officers and employees of the Corporation under sub-section (2) of section 11;

(iii) regulations for authorising its officers to carry out any functions for the purposes of this Act under section 12;

(iv) the place and time of discovery and production of books of account and other documents under sub-section (2), sharing of information or disclosures under clause (e) of sub-section (2) of section 13;

(v) the time for submission of report by the Investigating Authority under sub-section (7) of section 14;

(vi) the manner of constituting committees and the number of members thereof under section 19;

(vii) the manner of investing moneys by the Corporation under sub-section (3) of section 21;

(viii) the amount of fee, the manner of payments of such amount and the time within which it is to be paid under sub-section (1) of section 22;

(ix) the amount of premium and the manner of payment thereof under sub-section (2), and the manner under sub-section (3) of section 22;

(x) the manner and the period for submission of reports by systemically important financial institutions under sub-section (3), and the manner of inspection of the systemically important financial institutions under sub-section (4) of section 26;

(xi) the matters under sub-section (8) of section 29;

(xii) the form and manner of preparation and submission of list of depositors under any scheme of resolution under sub-section (1) of section 30;

(xiii) manner of payment of unpaid amount to a *bona fide* depositor under sub-section (2) of section 32;

(xiv) the form and manner of maintaining registers of specified service providers and conditions, if any, and the fee to be paid for inspection of such register under sub-section (4), and the information to be provided by the appropriate regulators under sub-section (5) of section 33;

(xv) the insured service provider which may be subject to cancellation of registration on the ground of non-payment of the premium under sub-section (2) of section 34;

(xvi) the rate of interest to be paid for default in payment of premium under sub-section (2) of section 35;

(xvii) time period for investigation, inquiry or inspection for the purpose of classification of a specified service provider in a category of risk to viability under sub-section (4), the objective criteria for classification of specified service providers under sub-section (5) of section 36;

(xviii) the information relating to business which may be relevant for classification of material, imminent or critical risk to viability under sub-section (5) of section 37;

(xix) any other relevant information to be contained in the restoration plan under clause (e) of sub-section (1), the form and manner of restoration plan under sub-section (3) of section 39;

(xx) the form and manner of resolution plan and the relevant information required by the Corporation under sub-section (2) of section 40;



(xxi) the meaning of the material change in the resolution plan or restoration plan under sub-section (7) of section 41;

(xxii) the manner replenishing financial resources by such central counterparty under clause (c) of sub-section (1), and the additional funds to be contributed by its existing participants for the purposes of meaning of "cash call" under sub-section (2) of section 44;

(xxiii) the form and manner of publication of classification under sub-section (3) of section 45;

(xxiv) the form and manner of giving show cause notice and the period of opportunity of being heard to be given under section 46;

(xxv) the other safeguards under sub-sections (1) and (2), and the contracts and agreements and the meaning of termination rights under sub-section (5), of section 47;

(xxvi) the form and manner of schemes or bail-in instruments for resolution of a specified service provider under sub-section (1), the measures to be taken and manner of sell or transfer under sub-clause (iii) of clause (a) and clause (b) of sub-section (2), manner of recovery of amounts under proviso to sub-section (6) of section 48;

(xxvii) any other terms and conditions of resolution of the specified service providers under clause (k) of sub-section (1) of section 49;

(xxviii) the form and manner of details of remuneration paid to chairperson, director, etc., under sub-section (1) and the portion of such remuneration to be designated as performance based incentives under sub-section (2) of section 51;

(xxix) the form and manner of bail-in instrument or scheme under sub-section (2), and the liabilities or class of liabilities under sub-section (4) and clause (h) of sub-section (7), of section 52;

(xxx) the client assets under clause (b) of sub-section (7) of section 52;

(xxxi) other safeguards relating to the methods of resolution under clause (d) of sub-section (1) and relating to bail-in under clause (d) of sub-section (2), the "client assets" and "collateral arrangements" under sub-section (5) of section 55;

(xxxii) the continuity of certain function under section 57;

(xxxiii) the access the books of account, records, and other relevant documents available to such authority, statutory authority and other persons under sub-clause (ii) of clause (c) of sub-section (2) of section 58;

(xxxiv) manner and additional measures for central counterparties under sub-section (4) of section 58;

(xxxv) manner and measures to replenish financial resources under clause (c) of sub-section (4) of section 58;

(xxxvi) the times, places and rules of procedure to be observed by the committee under sub-section (6) of section 62;

(xxxvii) salary and allowances to the administrator and the members of the committee constituted by the Corporation under sub-section (7) of section 62;

(xxxviii) manner of selling the immovable and movable property and actionable claims of the covered service provider in liquidation under clause (d) sub-section (1) of section 66;

(xxxix) the manner of reporting the progress of the liquidation process under clause (n) of sub-section (1) of section 66;

(xl) other means under clause (a) of sub-section (3) of section 67;

(xli) other assets under clause (e) of sub-section (4) of section 67;

(xlii) other source under clause (f) of sub-section (1) of section 68;

(xlili) the form and manner of providing financial information relating to the covered service under sub-section (2) of section 68;

(xliv) the manner of receiving or collecting the claims of all consumers and creditors under sub-section (1) of section 69;

(xlv) the form and manner and supporting documents required to prove the claim of a depositor or operational creditor under sub-section (3) of section 69;

(xlvi) the manner of verification of claims under sub-section (1) of section 70;

(xlvii) the form, manner and procedure of the list under sub-section (1) of section 72;

(xlviii) the manner of communication of admission or rejection of claims under sub-section (2), and the manner of payment of amounts covered under deposit insurance under sub-section (3), of section 73;

(xlix) the manner of determination of value of claims under section 75;

(l) the manner of realising security interest under clause (b) of sub-section (3) of section 79;

(li) the period and manner of distribution of liquidation assets; and the amounts due to insurance policy holders under item (ii) of clause (e), of sub-section (1) of section 80;

(lii) the circumstances in which transactions may be covered under sub-section (2) of section 89;

(liii) the conditions for voluntary liquidation under sub-section (1) of section 93;

(liv) the manner of publication of recognition and enforcement order under sub-section (3) of section 96;

(lv) the manner of adjustment of funds in case of repayment of amount to Corporation under the *explanation* to clause (a) of sub-section (2) of section 122;

(lvi) the form and manner of sharing and exchange of supervisory information of certain categories of specified service providers under clause (a) of section 128, and the manner of submitting findings of information under the proviso to thereof;

(lvii) the manner of application of the provisions relating to information utilities in the Insolvency and Bankruptcy Code, 2016 to the specified service providers under this Act under section 138;

13 of 2016.

(lviii) any other matter as may be necessary to give effect to the provisions of this Act.

Rules and regulations to be laid before Parliament.

**142.** Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, as the case may be, or both Houses agree that the rule or regulation, as the case may be,

should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

**143.** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of five years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be, after it is made, be laid before each House of Parliament.

**144.** (1) Without prejudice to the foregoing provisions of this Act, the Corporation shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Power of Central Government to give directions.

Provided that the Corporation shall, as far as practicable, be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

47 of 1961.

**145.** (1) The Deposit Insurance and Credit Guarantee Corporation Act, 1961 is hereby repealed.

Repeal and savings.

(2) Notwithstanding the repeal under sub-section (1),—

(a) anything done or any action taken or purported to have been done or taken under the repealed Act, shall insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) all offences committed, and existing proceedings with respect to offences which may have been committed under the repealed Act, shall continue to be governed by the provisions of that Act as if that Act had not been repealed and the Corporation may continue the existing proceedings as if those proceedings had been initiated by it:

Provided that the Corporation may initiate a fresh proceeding related to an offence under the repealed Act, within a period of three years from the date of such repeal.

(3) On and from the date of repeal under sub-section (1),—

(a) the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the repealed Act, including the Board or any committees constituted under that Act, shall stand dissolved and every member of such Board or committee shall cease to hold office as such:

Provided that no such member shall be entitled to any compensation for the loss of office due to such repeal and the consequent dissolution of the Deposit Insurance and Credit Guarantee Corporation or for the premature termination of any contract of management entered into by such member with the said Corporation and no such claim shall be entertained by any court, tribunal or other authority;

2 of 1934.

(b) notwithstanding anything in section 54AA of the Reserve Bank of India Act, 1934, the employees of the Reserve Bank of India holding any office under the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, shall,—

(i) for a period of one year, hold an office under the Corporation;

(ii) on the completion of one year, and before the completion of two years, have the option to continue in the Corporation or return to the Reserve Bank of India:

Provided that such employees shall be eligible for deputation and other allowances during the course of their employment in the Corporation and the seniority of such employees returning to the Reserve Bank of India shall be protected;

(c) the assets, liabilities, properties, undertakings, rights and claims of the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, shall stand transferred to, and vested with the Corporation;

(d) the assets of the Deposit Insurance and Credit Guarantee Corporation insofar as they relate to the Deposit Insurance Fund under section 23 of the repealed Act, shall stand transferred to the Corporation Insurance Fund under this Act;

(e) the assets, including rights and liabilities, if any, of the Deposit Insurance and Credit Guarantee Corporation insofar as they relate to the Credit Guarantee Fund under section 23A of the repealed Act, shall—

(i) stand transferred to the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934; and

2 of 1934.

(ii) all proceedings relating to the Credit Guarantee Fund pending under the repealed Act, shall be continued and may be enforced by or against the Reserve Bank of India under the provisions of that Act, as if that Act had not been repealed;

(f) the assets of the Deposit Insurance and Credit Guarantee Corporation insofar as they relate to the General Fund under section 24 of the repealed Act, shall stand transferred to the Reserve Bank of India;

(g) every banking institution registered as an insured bank under the repealed Act, shall be deemed to be an insured service provider under this Act;

(h) every insured service provider referred to in clause (g), shall pay the premium determined under section 15 of that Act, as if that Act had not been repealed, to the Corporation, till the Corporation determines the applicable premium to be paid under this Act and such premium shall be credited to the Corporation Insurance Fund constituted under section 21;

(i) any proceeding or cause of action or rights or claims against the Deposit Insurance and Credit Guarantee Corporation in relation to its assets, liabilities, properties and undertakings (other than the Credit Guarantee Fund) under the repealed Act, may be continued or enforced by or against the Corporation as if that Act had not been repealed;

(j) any amount repayable to the Deposit Insurance and Credit Guarantee Corporation under the repealed Act or under any law governing an eligible cooperative bank shall, notwithstanding such repeal be payable to the Corporation as if the obligation to repay such amount was to the Corporation under this Act;

(k) every officer or employee holding any office under the Deposit Insurance and Credit Guarantee Corporation immediately before the date of such repeal, shall hold office in the Corporation, for the same tenure and on the same terms and conditions of service as such employee would have held such office if the Deposit Insurance and Credit Guarantee Corporation had not been dissolved:

Provided that nothing in any other law for the time being in force shall entitle any employee of the Deposit Insurance and Credit Guarantee Corporation to any

compensation for the loss of office due to such repeal, and the consequent dissolution of the Deposit Insurance and Credit Guarantee Corporation, and no such claim shall be entertained by any court, tribunal or other authority;

(l) the concessions, privileges, benefits and exemptions with regard to the payment of any tax, duty and cess granted to the Deposit Insurance and Credit Guarantee Corporation with respect to its undertaking shall be transferred to the Corporation and the Corporation shall be entitled to such concessions, privileges, benefits and exemptions.

(4) The mention of particular matters under sub-section (2) and sub-section (3) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

10 of 1897.

**146.** The enactments specified in the Fourth Schedule shall be amended in the manner specified therein.

Amendment  
of certain  
enactments.

## THE FIRST SCHEDULE

[See section 2(2)]

## APPROPRIATE REGULATOR

1. The Reserve Bank of India, as constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934), for banking institutions, non-banking financial companies, and payment systems under the Payment and Settlement Systems Act, 2007 (51 of 2007).

2. The Insurance Regulatory and Development Authority of India, as established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999), for insurance companies.

3. The Securities and Exchange Board of India, as established under sub-section (1) of section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) for all entities requiring registration under section 12 of the said Act, recognised stock exchange as defined in clause (f) of section 2 and clearing corporation as referred to in section 8A of Securities Contracts (Regulation) Act, 1956 (42 of 1956), and depository as defined under clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996).

4. The Pension Fund Regulatory Development Authority, as established under sub-section (1) of section 3 of the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013) for any entities regulated by them which may be notified as specified service provider under the Second Schedule to this Act.

5. Any other regulator as may be notified by the Central Government.

## THE SECOND SCHEDULE

[See section 2(34) and section 33(1)]

## SPECIFIED SERVICE PROVIDER

1. Any banking institution, other than eligible co-operative bank including an insured service provider.
2. Any insurance company.
3. Any Financial Market Infrastructure.
4. Any payment system, as defined under the Payment and Settlement Systems Act, 2007 (51 of 2007), not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).
5. Any non-banking financial company, not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).
6. Any systemically important financial institution.
7. Any other financial service provider (excluding individuals and partnership firms), not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).
8. A holding company of any specified service provider enumerated under items 1 to 7, registered in India which is not notified under section 227 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), subject to the determination by the Corporation under the proviso to sub-section (1) of section 33.
9. Non-regulated operational entities within a financial group or conglomerate of a specified service provider enumerated under items 1 to 7 subject to the determination by the Corporation under the proviso to sub-section (1) of section 33.
10. Branch offices of body corporates incorporated outside India, carrying on the business of providing financial service in India.
11. Any other entity or fund which may be notified by the Central Government.



## THE THIRD SCHEDULE

[See section 123]

## DECLARATION OF FIDELITY AND SECRECY

I, ----- (name of person) do hereby declare that I shall faithfully, truly and to the best of my skill and ability execute and perform the duties required of me as Member, auditor, officer independent valuer or other employee (strike out which is not applicable) of the Corporation and which properly relate to the office or position held by me in the Corporation.

I further declare that I shall not communicate or allow to be communicated to any person not legally entitled thereto any information relating to the affairs of the Corporation or to the affairs of any person having any dealing with the Corporation; nor will I allow any such person to inspect or have access to any books or documents belonging to or in the possession of the Corporation and relating to the business of the Corporation or the business of any person having any dealing with the Corporation.

Place: \_\_\_\_\_

(Signature)

Date: \_\_\_\_\_

Name and Designation

*Signed before me:*

## THE FOURTH SCHEDULE

[See section 145]

## AMENDMENT TO CERTAIN ENACTMENTS

## PART I

## AMENDMENT TO THE INDIAN STAMP ACT, 1899

(2 OF 1899)

After section 8F, the following section shall be inserted, namely:—

"8G. Notwithstanding anything in this Act or any other law for the time being in force, any property acquired, held or disposed of, or any contract entered into, by the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 in accordance with the provisions of that Act, shall not be liable to duty under this Act."

Amendment of section 8F. Income of Resolution Corporation to be exempt from stamp duty.

## PART II

## AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934

(2 OF 1934)

## 1. In section 45MC,—

(i) in sub-section (1), in clause (d), for the words and figures "the Companies Act, 1956", the words and figures "the Financial Resolution and Deposit Insurance Act, 2017 or the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be substituted;

1 of 1956.  
31 of 2016.

Amendment of section 45 MC.

(ii) in sub-section (4), for the words and figures "the Companies Act, 1956", the words and figures "the Financial Resolution and Deposit Insurance Act, 2017 or the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be substituted.

1 of 1956.  
31 of 2016.

## 2. After section 45X, the following section shall be inserted, namely:—

'45XA.(1) Where one of the parties to the specified transaction is a party referred to in section 45V, notwithstanding anything to the contrary in any other law for the time being in force, netting shall be applicable in the case of insolvency, winding up, liquidation or resolution of a party to such transaction.

Insertion of new section 45 XA.

Netting in insolvency, winding up or resolution.

*Explanation.*— For the purposes of this sub-section,—

(i) "netting" means determination of any payment or other obligation arising out of any specified transaction between the parties, whether or not due or payable, by set-off or adjustment between the parties and a net obligation is arrived at in the manner specified by the Bank;

(ii) "resolution" shall have the same meaning as assigned to it in clause (28) of sub-section (1) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017;

(iii) "specified transaction" means a transaction in securities, money market instruments, derivatives or such other instruments or transactions, as may be specified by the Bank.

(2) For the purpose of netting under sub-section (1), the following shall be taken into account, namely:—

(a) the value of cash or security or collateral provided by either party or a guarantor or other person in respect of such party and the proceeds of sale of securities available with either parties to the transaction; and

(b) the current value of payment or other obligations due at a future date arrived at by prematurely terminating the transactions.

(3) The amount payable or other claims that may be made or determined under sub-section (1), shall be final and irrevocable and shall be binding on the liquidator, administrator, receiver or trustee, (by whatever name called), of the party in insolvency, winding up, or liquidation or resolution.

(4) Notwithstanding anything to the contrary in any agreement or contract between the parties, for the realisation or appropriation or liquidation of any collateral to determine the amount payable or other claims that may be made under sub-section (1), no prior notice to, or consent of, the party in insolvency, winding up, liquidation or resolution or its liquidator, administrator or receiver or trustee (by whatever name called) shall be required.'.

### PART III

#### AMENDMENTS TO THE INSURANCE ACT, 1938

(4 OF 1938)

Amendment of section 33. **1.** In section 33, in sub-section (6), for clause (c), the following clause shall be substituted, namely:—

"(c) recommend to the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017, to make an application to the National Company Law Tribunal for the winding up of the insurer under Chapter XII of that Act, if it is a company, whether the registration of the insurer has been cancelled under clause (b) or not."

Amendment of section 35. **2.** In section 35, after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."

Amendment of section 36. **3.** Section 36, shall be renumbered as sub-section (1) thereof and after the sub-section so renumbered, the following sub-section shall be inserted, namely:—

"(2) Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."

Amendment of section 37. **4.** In section 37, the following proviso shall be inserted, namely:—

"Provided that where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."

**5.** In section 37A, after sub-section (13), the following sub-section shall be inserted, namely:—

Amendment of section 37A.

"(14) Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under this section, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."

**6.** In section 52B, in sub-section (1), for clause (c), the following clause shall be substituted, namely:—

Amendment of section 52B.

"(c) the winding up of the insurer, in accordance with the provisions of the Financial Resolution and Deposit Insurance Act, 2017;"

**7.** After section 52G, the following section shall be inserted, namely:—

Amendment of section 52G.

"52GA. Where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the Authority under sections 52A, 52B, 52C, 52D, 52E, 52F and 52G, shall, notwithstanding anything in this Act, be exercised by the Resolution Corporation established under section 3 of that Act."

Resolution of an insurance company.

**8.** For section 53, the following section shall be substituted, namely:—

Amendment of section 53.

"53.(1) Where the Authority is satisfied,—

Winding up of an insurer.

(i) that the company having failed to comply with any requirement of this Act has continued such failure or having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Authority,

(ii) that it appears from any returns or statements furnished under the provisions of this Act or from the results of any investigation made there under that the company is, or is deemed to be insolvent, or

(iii) that the continuance of the company is prejudicial to the interest of the policy-holders or the public interest generally,

it may make a recommendation to the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017, to make an application to the National Company Law Tribunal for the winding up of the insurer under Chapter XII of that Act.

(2) All the provisions of the Financial Resolution and Deposit Insurance Act, 2017 relating to winding up shall apply to a proceeding under this section."

18 of 2013.

**9.** In section 54, after the words and figures, "the Companies Act, 2013", the words and figures "but without prejudice to section 93 of the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.

Amendment of section 54.

**10.** In section 55, sub-section (3) shall be omitted.

Amendment of section 55.

**11.** In section 57, after sub-section (6), the following sub-section shall be inserted, namely:—

Amendment of section 57.

"(7) All the provisions of the Financial Resolution and Deposit Insurance Act, 2017, relating to liquidation shall *mutatis mutandis*, apply to a proceeding under this section."

Amendment of section 58.	<p><b>12.</b> In section 58, after sub-section (4), the following sub-section shall be inserted, namely:—</p> <p>"(5) Where the insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the Authority shall not exercise any power under this section."</p>
Amendment of section 60.	<p><b>13.</b> In section 60, the following proviso shall be inserted, namely:—</p> <p>"Provided that where the insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers exercisable by the liquidator or assignee under this section shall be exercised by the liquidator appointed under that Act."</p>
Amendment of section 61.	<p><b>14.</b> In section 61, for sub-section (3), the following sub-section shall be substituted, namely:—</p> <p>"(3) The Resolution Corporation established under section 3 of the Financial and Resolution and Deposit Insurance Act, 2017 may, in consultation with the Authority, make an application for an order in accordance with the provisions of that Act."</p>
Amendment of section 64VA.	<p><b>15.</b> In section 64VA, after sub-section (7), the following sub-section shall be inserted, namely:—</p> <p>"(8) Notwithstanding anything in this section, the powers under this section shall not be exercised by the Authority where an insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."</p>

## PART IV

## AMENDMENTS TO THE BANKING REGULATION ACT, 1949

(10 OF 1949)

Amendment of section 5.	<p><b>1.</b> In section 5, after clause (<i>ne</i>), the following clause shall be inserted, namely:—</p> <p>"(<i>nf</i>) "Tribunal" means the National Company Law Tribunal" established under section 408 of the Companies Act, 2013;"</p>	18 of 2013.
Amendment of section 35.	<b>2.</b> In section 35, in sub-section (4), sub-clause ( <i>b</i> ) shall be omitted.	
Omission of Part IIC.	<b>3.</b> Part IIC and sections 36AE, 36AF, 36AG, 36AH, 36AI and 36AJ shall be omitted.	
Omission of sections 36B and 37.	<b>4.</b> Sections 36B and 37 shall be omitted.	
Amendment of section 38.	<p><b>5.</b> In section 38,—</p> <p>(a) in sub-section (I),—</p> <p>(i) for the words and figures "section 391, section 392, section 433 and section 583 of the Companies Act, 1956", the words and figures "section 230, section 231, section 271 and section 375 of the Companies Act, 2013" shall be substituted;</p> <p>(ii) for the words "High Court", the word "Tribunal" shall be substituted;</p> <p>(b) in sub-section (3), in clause (<i>b</i>), in sub-clause (<i>i</i>), for the word "court", the word "Tribunal" shall be substituted;</p> <p>(c) in sub-section (4), for the words and figures "section 434 of the Companies Act, 1956", the words, figures and brackets "sub-section (2) of section 271 of the Companies Act, 2013" shall be substituted;</p>	<p>1 of 1956. 18 of 2013.</p> <p>1 of 1956. 18 of 2013.</p>

(d) after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) All the provisions of the Financial Resolution and Deposit Insurance Act, 2017, relating to liquidation shall apply to a proceeding of winding up initiated on the application made by the Reserve Bank under this section."

**5.** Sections 38A, 39, 39A, 40, 41, 41A, 42, 43, 43A and 44 shall be omitted.

Amendment  
of sections  
38A, 39,  
39A, 40, 41,  
41A, 42, 43,  
43A and 44.

**6.** In section 44A, after sub-section (7), the following sub-section shall be inserted, namely:—

Amendment  
of section  
44A.

"(8) Where the banking company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the Reserve Bank shall not exercise any powers under this section."

**7.** In section 44B,—

Amendment  
of section  
44B.

(a) in sub-section (1), for the words "High Court", the word "Tribunal" shall be substituted;

(b) in sub-section (2),—

(i) for the words and figures "section 391 of the Companies Act, 1956", the words and figures "section 230 of the Companies Act, 2013" shall be substituted;

(ii) for the words "High Court" at both the places, wherever they occur, the word "Tribunal" shall be substituted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Where a banking company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers of the Reserve Bank exercisable under sub-section (1) or sub-section (2), shall be exercised by the Resolution Corporation established under section 3 of that Act."

**8.** In section 45, after sub-section (14), the following sub-section shall be inserted, namely:—

Amendment  
of section 45.

"(14A) Where a banking company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017, the powers under this section shall not be exercised by the Reserve Bank."

**9.** Sections 45B, 45C, 45D, 45E, 45F, 45G, 45H, 45-I and 45J shall be omitted.

Omission of  
sections 45B,  
45C, 45D,  
45E, 45F, 45G,  
45H, 45-I and  
45J.

**10.** In section 45L,—

Amendment  
of section 45L.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where an application for sanction of a compromise or arrangement in respect of a banking company is made under section 230 of the Companies Act, 2013, or where such sanction has been given and the Tribunal is of the opinion, whether on a report of the Reserve Bank or the Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017,

1 of 1956.  
18 of 2013.

18 of 2013.

that any person who has taken part in the promotion and formation of the banking company or has been a director or auditor of the banking company should be publically examined it may direct such examination of such person and the provisions of section 77 of that Act shall apply to the banking company as they apply to a specified service provider which is being liquidated under that Act.";

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Where a compromise or arrangement is sanctioned under section 230 of the Companies Act, 2013, in respect of a company, the provisions of section 340 of the said Act and of section 78 of the Financial Resolution and Deposit Insurance Act, 2017, shall apply to the banking company as they apply to a specified service provider which is being liquidated under that Act, as if the order sanctioning the compromise or arrangement were an order for the liquidation of the banking company."

18 of 2013.

(c) in sub-section (3), for the words "High Court" at both places, wherever they occur, the word "Tribunal" shall be substituted;

(d) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) Where a scheme of reconstruction of a banking company has been sanctioned by the Central Government under section 45, the provisions of section 340 of the Companies Act, 2013, and of section 78 of the Financial Resolution and Deposit Insurance Act, 2017 shall apply to the banking company as they apply to specified service provider which is being liquidated under that Act, as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for liquidation of the specified service provider; and any reference in said section 340 to the application of the official liquidator shall be construed as a reference to the application of the Central Government."

18 of 2013.

Omission of sections 45M, 45N, 45-O, 45P, 45Q, 45S, 45T and 45U.

11. Sections 45M, 45N, 45-O, 45P, 45Q, 45S, 45T and 45U shall be omitted.

## PART V

### AMENDMENTS TO THE STATE BANK OF INDIA ACT, 1955

(23 OF 1955)

Amendment of section 24A.

1. In section 24A, after sub-section (10), the following sub-section shall be inserted, namely:—

"(11) The powers of supersession of the Central Board under this section shall not be exercised where the State Bank is classified in the category of imminent or critical risk to viability under the provisions of the Financial Resolution and Deposit Insurance Act, 2017."

Amendment of section 35.

2. In section 35, after sub-section (13), the following sub-section shall be inserted, namely:—

"(14) The powers of acquisition under this section shall not be exercised where the State Bank or the relevant banking institution, as the case may be, is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."

Amendment of section 45.

3. In section 45, the following proviso shall be inserted, namely:—

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."



4. After section 45, the following section shall be inserted, namely:—

Insertion of  
new section  
45A.

'45A. Notwithstanding anything in this Act, the Resolution Corporation established under section of the Financial Resolution and Deposit Insurance Act, 2017, shall have the powers to carry out resolution of the State Bank under that Act (other than powers in relation to liquidation).

Power of  
Resolution  
Corporation.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'

## PART VI

### AMENDMENTS TO THE LIFE INSURANCE CORPORATION ACT, 1956

(31 OF 1956)

1. In section 38, the following proviso shall be inserted, namely:—

Amendment  
of section 38.

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

2. After section 38, the following section to be inserted, namely:—

Insertion of  
new section  
38A.

'38A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the Corporation under that Act (other than powers in relation to liquidation).

Powers of  
Resolution  
Corporation.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'

## PART VII

### AMENDMENTS TO THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(42 OF 1956)

1. In section 2, after clause (c), the following clause shall be inserted, namely:—

Amendment  
of section 2.

'(ca) "netting" means the determination by clearing corporation of net payment or delivery obligations of the clearing members of a recognised clearing corporation by setting off or adjustment of the inter-se obligations or claims arising out of buying and selling of securities, including the claims and obligations arising out of the determination by the clearing corporation or stock exchange, on the insolvency, winding-up, liquidation or resolution of any clearing member or trading member or client or such other circumstances as the clearing corporation may specify in its bye-laws, of the transactions admitted for settlement at a future date so that only a net claim be demanded, or a net obligation be owned;'

2. After section 19, the following sections shall be inserted, namely:—

Insertion of  
new sections  
19A and 19B.

'19A. Notwithstanding anything in any other law for the time being in force, the right of clearing corporation to recover their dues from clearing members, incurred in discharge of their clearing and settlement functions, from the collaterals, deposits and the assets of clearing members held by the clearing corporation for this purpose, in

Right of  
clearing  
corporation.

case of insolvency, winding-up, liquidation or resolution, as the case may be, of such clearing member, shall take precedence over the rights of other persons in such insolvency, winding-up, liquidation or resolution proceedings.

Settlement  
and netting.

19B. (1) The payment and settlement in respect of transactions in a recognised stock exchange a recognised clearing corporation shall be determined in accordance with the netting (or gross) procedure as per the bye-laws of a recognised stock exchange, or clearing corporation, as the case may be, with the prior approval of the Securities and Exchange Board of India.

(2) Notwithstanding anything in any other law for the time being in force, a payment and settlement referred to in sub-section (1), between the parties thereto, effected as per the bye-laws of a recognised stock exchange or clearing corporation, as the case may be, shall be final, irrevocable and binding on such parties.

(3) Where a trading member or a clearing member or an investor client is declared by a court of competent jurisdiction as insolvent or is dissolved or wound-up or resolved, or a liquidator, administrator, receiver or assignee (by whatever name called), whether provisional or otherwise, is appointed in a proceeding relating to insolvency, resolution or dissolution or winding up of a system participant, then such order of adjudication, dissolution, winding-up, or resolution, as the case may be, shall not affect any settlement that has become final and irrevocable and the right of the recognised clearing corporation or recognised stock exchange, as the case may be, to appropriate any collaterals or deposits or margins contributed by the said trading member or clearing member or client towards its settlement or other obligations in accordance with the bye-laws of such recognised stock exchange or clearing corporation, as the case may be.

*Explanation.*—For removal of doubts, it is hereby clarified that the settlement, whether gross or net, referred to in this section shall be final and irrevocable as soon as the money, securities or other transactions payable as a result of such settlement is determined, whether or not such money, securities or other transactions is actually paid.

(4) Where an order referred to in sub-section (3) is made with respect to a clearing corporation or a stock exchange, then, notwithstanding such order or anything in any other law for the time being in force, the payment obligations and settlement instructions between the clearing corporation and the clearing members including those arising from transactions admitted for settlement at a future date, shall be determined forthwith by the clearing corporation, in accordance with the gross or netting procedure, as the case may be, in accordance with the bye-laws of such clearing corporation, and such determination shall be final and irrevocable.

(5) Notwithstanding anything in any other law for the time being in force, the liquidator, administrator, receiver or assignee (by whatever name called) of the clearing corporation, whether appointed as provisional or otherwise, shall—

(a) not re-open any determination that has become final and irrevocable;

(b) after appropriating in accordance with the bye-laws of the clearing corporation, the collaterals provided by the clearing members towards their settlement or other obligations, return the collaterals held in excess to the clearing members concerned;

(c) while distributing the assets, apply the assets in priority against the dues arising out of settlement obligations of the clearing corporation and only thereafter apply the assets against third party claims."

## PART VIII

## AMENDMENTS TO THE STATE BANK OF INDIA (SUBSIDIARY BANKS)

ACT, 1959

(38 OF 1959)

1. In section 38, after sub-section (13), the following sub-section shall be inserted, namely:— Amendment of section 38.

"(13A) The powers of acquisition under this section shall not be exercised where the relevant banking institution or the subsidiary bank, as the case may be, is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."

2. In section 57, the following proviso shall be inserted, namely:— Amendment of section 57.

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

3. After section 57, the following section to be inserted, namely:— Insertion of new section 57A.

'57A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution for any subsidiary bank under that Act (other than powers in relation to liquidation). Powers of Resolution Corporation.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017."

## PART IX

## AMENDMENT TO THE INCOME-TAX ACT, 1961

(43 OF 1961)

- 31 of 2016. In section 178, in sub-section (6), after the words and figures "except the provisions of the Insolvency and Bankruptcy Code, 2016", the words and figures "and the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted. Amendment of section 178.

## PART X

## AMENDMENT TO THE CUSTOMS ACT, 1962

(52 OF 1962)

- 31 of 2016. In section 142A, for the words and figures "and the Insolvency and Bankruptcy Code, 2016", the words and figures "the insolvency and Bankruptcy Code, 2016 and the Financial Resolution and Deposit Insurance Act, 2017" shall be substituted. Amendment of section 142 A.

## PART XI

## AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS)

ACT, 1970

(5 OF 1970)

1. In section 18, the following proviso shall be inserted, namely:— Amendment of section 18.

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

Amendment  
of section  
18A.

2. In section 18A, after sub-section (10), the following sub-section shall be inserted, namely:—

"(11) The powers of supersession of Board under this section shall not be exercised where the relevant corresponding new bank is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."

Insertion of  
new section  
18B.

3. After section 18A, the following section shall be inserted, namely:—

Powers of  
Resolution  
Corporation.

'18B. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any corresponding new bank under that Act (other than powers in relation to liquidation).

*Explanation.*— For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017'.

## PART XII

### AMENDMENTS TO THE GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

(57 OF 1972)

Amendment of  
section 16.

1. In section 16, after sub-section (8), the following sub-section shall be inserted, namely:—

"(9) The powers relating to merger under this section shall not be exercised where the relevant Indian insurance company is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."

Amendment of  
section 33.

2. In section 33, the following proviso shall be inserted, namely:—

"Provided that the Central Government may appoint the Resolution Corporation as established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

Insertion of new  
section 33A.

3. After section 33, the following section shall be inserted, namely:—

Powers of  
Resolution  
Corporation.

'33A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the Corporation and any acquiring company under that Act (other than powers in relation to liquidation).

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017'.

## PART XIII

### AMENDMENTS TO THE REGIONAL RURAL BANKS ACT, 1976

(26 OF 1976)

Amendment  
of section 26.

1. In section 26, the following proviso shall be inserted, namely:—

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

2. After section 26, the following section shall be inserted, namely:—

Insertion of new section 26A.

"26A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the provisions of the Financial Resolution and Deposit Insurance Act, 2017, shall have the powers to carry out resolution of the Regional Rural Bank under that Act (other than powers in relation to liquidation).

Powers of Resolution Corporation.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.

#### PART XIV

#### AMENDMENTS TO THE BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ACT, 1980

(40 OF 1980)

1. In section 18, the following provisions shall be inserted, namely:—

Amendment of section 18.

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

2. In section 18A, after sub-section (10), the following sub-section shall be inserted, namely:—

Amendment of section 18A.

"(11) The powers of supersession of Board under this section shall not be exercised where the relevant corresponding new bank is classified in the category of imminent or critical risk to viability under the Financial Resolution and Deposit Insurance Act, 2017."

3. After section 18A, the following section shall be inserted, namely:—

Insertion of new section 18B.

'18B. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the provisions of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any corresponding new bank under that Act (other than powers in relation to liquidation).

Powers of Resolution Corporation.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.

#### PART XV

#### AMENDMENTS TO THE EXPORT-IMPORT BANK OF INDIA ACT, 1981

(28 OF 1981)

1. In section 38, the following proviso shall be inserted, namely:—

Amendment of Section 38.

"Provided that the Central Government may appoint Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

2. After section 38, the following section to be inserted, namely:—

Insertion of new section 38A.

'38A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the Exim Bank under that Act (other than powers in relation to liquidation).

Powers of Resolution Corporation.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'.

## PART XVI

## AMENDMENTS TO THE NATIONAL HOUSING BANK ACT, 1987

(53 OF 1987)

Amendment of  
section 54.**1.** In section 54, the following proviso shall be inserted, namely:—

"Provided that the Central Government may appoint the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 as the liquidator for the purposes of this section."

Insertion of  
new section  
54A.**2.** After section 54, the following section to be inserted, namely:—Powers of  
Resolution  
Corporation.

'54A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of the National Housing Bank under that Act (other than powers in relation to liquidation).

*Explanation.*— For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'

## PART XVII

## AMENDMENT TO THE FINANCE ACT, 1994

(32 OF 1994)

Amendment  
of section 88.

In section 88, after the words and figures "the Insolvency and Bankruptcy Code, 2016", the words and figures "the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.

31 of 2016.

## PART XVIII

## AMENDMENTS TO THE MULTI-STATE COOPERATIVE SOCIETIES ACT, 2002

(39 OF 2002)

Amendment  
of section 3.**1.** In section 3, after clause (v), the following clause shall be inserted, namely:—

(va) "Resolution Corporation" means the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017;"

Amendment  
of section 17.

**2.** In section 17, in sub-section (6), in clause (a), after the words "has been obtained", the words "and in the case of a co-operative bank, previous sanction in writing of the Reserve Bank has also been obtained" shall be inserted.

Insertion of  
new section  
18A.**3.** After section 18, the following section shall be inserted, namely:—Powers of  
Resolution  
Corporation.

'18A. (1) Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any co-operative bank under that Act.

(2) The exercise of powers by the Resolution Corporation under the Financial Resolution and Deposit Insurance Act, 2017 for resolution of a co-operative bank referred to in sub-section (1) or the resolution methods used by the Resolution Corporation for such resolution, shall not be subject to any limitation contained in this Act.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'

**4. For section 20, the following shall be substituted, namely:—**

Substitution of new section for section 20.

"20. Notwithstanding anything in section 17 or any other provision of this Act, where a co-operative bank, is under resolution under the provisions of the Financial Resolution and Deposit Insurance Act, 2017 and the Resolution Corporation has become liable to pay to the depositors of such insured service provider under section 29 of that Act, the transferee or acquiring entity under the scheme sanctioned for such resolution or the liquidator in case of liquidation of co-operative bank, shall be under an obligation to repay to the Resolution Corporation in the circumstances, to the extent and in the manner referred to in section 122 of that Act."

Liability to Resolution Corporation in case of resolution of co-operative bank.

**5. In section 86, for sub-section (5), the following sub-section shall be substituted, namely:—**

Amendment of section 86.

"(5) Notwithstanding anything in this section, no co-operative bank shall be wound up, except in accordance with the provisions of section 87."

**6. For section 87, the following section shall be substituted, namely:—**

Substitution of new section for section 87.

"87. Notwithstanding anything to the contrary in this Act, the National Company Law Tribunal established under section 408 of the Companies Act, 2013 shall make an order for the winding up of a co-operative bank, if so required, on an application—

Winding up of co-operative bank.

(i) by the Resolution Corporation in accordance with the provisions of section 63 of the Financial Resolution and Deposit Insurance Act, 2017; or

(ii) by the Reserve Bank, if any, in the circumstances mentioned in clauses (a) to (f) of sub-section (1) of section 121 of the Financial Resolution and Deposit Insurance Act, 2017.

*Explanation.*—For removal of doubts, it is clarified that all the provisions of Financial Resolution and Deposit Insurance Act, 2017 relating to winding up shall apply to a proceeding under this section."

**7. Section 88 shall be omitted.**

Omission of section 88.

**PART XIX****AMENDMENTS TO THE COMPANIES ACT, 2013**

(18 OF 2013)

**1. In section 419, in sub-section (1), the following proviso shall be inserted, namely:—**

Amendment of section 419.

"Provided that the Central Government may, by notification, specify such number of benches of the Tribunal as may be necessary for the purposes of exercising the jurisdiction under the Financial Resolution and Deposit Insurance Act, 2017."

**2. In section 424,—**

Amendment of section 424.

(i) in sub-section (1), after the words and figures "or of the Insolvency and Bankruptcy Code, 2016", the words and figures "or the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted;

(ii) in sub-section (2), after the words and figures "or under the Insolvency and Bankruptcy Code, 2016", the words and figures "or the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.

**3. In section 429, in sub-section (1), after the words and figures "the Insolvency and Bankruptcy Code, 2016", the words and figures "and the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.**

Amendment of section 429.



## PART XX

## AMENDMENT TO THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY ACT, 2013

(23 OF 2013)

Amendment  
of section 19.

After section 19, the following section shall be inserted, namely:—

Powers of  
Resolution  
Corporation.

'19A. Notwithstanding anything in this Act, the Resolution Corporation established under section 3 of the Financial Resolution and Deposit Insurance Act, 2017 shall have the powers to carry out resolution of any pension fund or any other entity connected to such pension fund, as the case may be.

*Explanation.*—For the purpose of this section, the expression "resolution" shall have the same meaning as assigned to it in clause (28) of section 2 of the Financial Resolution and Deposit Insurance Act, 2017.'

## PART XXI

## AMENDMENT TO THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(31 OF 2016)

Amendment  
of section 59.

In section 59, after sub-section (9), the following sub-section shall be inserted, namely:—

'(10) Notwithstanding anything to the contrary in this Code, a specified service provider eligible to be voluntarily liquidated in accordance with section 93 of the Financial Resolution and Deposit Insurance Act, 2017, may be voluntarily liquidated under this section, subject to such conditions as may be specified by the regulations made by appropriate regulator:

Provided that the proceeds of liquidation shall be distributed in accordance with section 80 of the Financial Resolution and Deposit Insurance Act, 2017.

*Explanation 1.*—The expressions "specified service provider" and "appropriate regulator" shall have the same meaning as respectively assigned to them under the Financial Resolution and Deposit Insurance Act, 2017.

*Explanation 2.*—The constitution of liquidation estate for the purpose of voluntary liquidation of a specified service provider under this section shall be in accordance with the provisions of section 67 of the Financial Resolution and Deposit Insurance Act, 2017.'

## PART XXII

## AMENDMENT TO THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

(12 OF 2017)

Amendment  
of section 82.

In section 82, after the words and figures "the Insolvency and Bankruptcy Code, 2016", the words and figures "and the Financial Resolution and Deposit Insurance Act, 2017" shall be inserted.

31 of 2016.

## STATEMENT OF OBJECTS AND REASONS

At present, there is no specific law in India for resolution of failures of financial service providers. However, some provisions relating to the failures of financial service providers can be found scattered in certain enactments, such as, the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934, the Insurance Act, 1938, the Life Insurance Corporation Act, 1956, the General Insurance Business (Nationalisation) India Act, 1972, the Regional Rural Banks Act, 1976, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, the State Bank of India Act, 1955, the State Bank of India (Subsidiary Banks) Act, 1959 and the Multi-State Co-operative Societies Act, 2002.

2. The impact of failures of financial service providers is much wider and can have a systemic effect on the economy and financial stability of a country, unlike traditional insolvency, where the affected parties are limited to the creditors of the insolvent entity. Since financial service providers handle consumer funds, some of them are critical for stability of the financial system, it is important to resolve failing financial service providers expeditiously through a specialised resolution process, as lengthy resolution proceedings can lead to losses for consumers, or instability in the financial system. The existing laws are inadequate, ineffective and fail to address the larger issue of preserving financial stability as they do not provide effective resolution tools and powers to the resolution authorities. Therefore, with a view to comply with the emerging international norms for establishing effective resolution regime for financial sector, it is proposed to regulate certain categories of financial service providers listed in the Second Schedule to the proposed legislation.

3. The Insolvency and Bankruptcy Code, 2016 has been enacted with a view to comprehensively reform the legislative framework for insolvency and bankruptcy. However, at present the said Code does not automatically cover financial service providers. The proposed legislation together with the Insolvency and Bankruptcy Code, 2016 is expected to provide a comprehensive resolution mechanism for our economy with the objective of protecting consumers of specified service providers and public funds, thereby contributing to the stability and resilience of the financial system.

4. The proposed Financial Resolution and Deposit Insurance Bill, 2017, *inter alia*, provides for,—

(a) establishment of a Resolution Corporation and to confer upon the Corporation certain powers of resolution relating to transfer of assets to a healthy financial firm, merger or amalgamation, liquidation to be initiated by an order of the National Company Law Tribunal and some new methods of resolution, such as bail-in and creation of a bridge service provider;

(b) designation of certain financial service providers as Systemically Important Financial Institutions, based on the criteria to be determined by the Central Government, the failure of which may disrupt the entire financial system and in view of their importance for the economy, the proposed legislation confers some additional powers in respect of such institutions;

(c) constitution of certain funds for the purposes of the proposed legislation, namely, (i) the Corporation Insurance Fund for deposit insurance provided by the Corporation to the insured service providers; (ii) the Corporation Resolution Fund for meeting the expenses of carrying out resolution of specified service providers; and (iii) the Corporation General Fund for all other functions of the Corporation;

(d ) repeal of the Deposit insurance and Credit Guarantee Corporation Act, 1961;

(e) amendment of certain enactments, in the manner provided in the Fourth Schedule to the proposed legislation, with a view to give resolution powers to the Resolution Corporation under those Acts.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 28th July, 2017.*

ARUN JAITLEY.

*Notes on clauses*

*Clause 2* defines the various expressions used in the Bill.

*Clause 3* provides for the establishment of a body corporate by the name of Resolution Corporation, with perpetual succession, a common seal, power to acquire, hold or dispose of property, power to enter into contracts and the power to sue and be sued in its own name, with its headquarters in Mumbai.

*Clause 4* seeks to provide that the general superintendence, direction and management of the affairs of the Corporation shall vest in the Members of the Corporation, which may exercise all powers and do all acts and things which may be exercised by the Corporation. It further provides for the constitution of the Corporation, including the qualifications, term, salaries and allowances of the Chairperson and the Members.

*Clause 5* seeks to impose restrictions on future employment of the Chairperson and Members, including the time period applicable for such restriction and the requirement of previous approval of the Central Government before obtaining certain types of employment.

*Clause 6* seeks to specify the circumstances in which the Central Government may remove the Chairperson or a Member from the Corporation, including being declared an insolvent, physical or mental incapacity, conviction for an offence which involves moral turpitude, and abuse of position which renders the continuation in office detrimental to public interest. It further provides for all Members to be given a reasonable opportunity of being heard, before being removed.

*Clause 7* seeks to provide that the Chairperson shall have the powers of general superintendence and control in respect of all administrative matters of the Corporation and may also exercise such other powers, except the powers exercisable under clause 12, as may be delegated to him by the Corporation.

*Clause 8* seeks to provide that the Corporation shall meet at such times and places, and observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by it.

*Clause 9* prohibits Members from participating in meetings in certain cases. It provides that any Member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Corporation, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Corporation, and the Member shall not take any part in any deliberation or decision of the Corporation with respect to that matter.

*Clause 10* seeks to provide that no act or proceeding of the Corporation shall be invalid merely by reason of any vacancy in or any defect in the constitution of the Corporation or any defect in the appointment of a person as a Member or any irregularity in the procedure of the Corporation not affecting the merits of the case.

*Clause 11* seeks to empower the Corporation to appoint officers and employees, for the efficient discharge of its functions under the Bill. It further makes provision for the Corporation to utilise and for the appropriate regulator to make available, the services of such employees of the appropriate regulator on such terms and conditions as may be agreed upon by the Corporation and the appropriate regulator.

*Clause 12* seeks to empower the Corporation to make suitable regulations, consistent with the provisions of the Bill and to authorise officers to carry out functions under the Bill.

*Clause 13* seeks to specify the powers and functions of the Corporation, including the functions relating to the provision for deposit insurance, specifying objective criteria for the classification of a specified service provider into one of the categories of risk to viability, powers in relation to exercise of early termination rights, resolution of a specified service provider, and acting as an administrator. It further vests the Corporation with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in matters relating to the discovery and production of books of account and other documents, summoning, and enforcing the attendance of persons and examining them on oath; issuance of commissions for the examination of witnesses or documents; and other matters which may be prescribed in the rules.

*Clause 14* seeks to empower the Corporation with the powers of investigation where the Corporation has reasonable grounds to believe that the activities of a specified service provider are being conducted in a manner detrimental to the interest of the consumers or any person or entity related to the specified service provider has violated any of the provisions of the Bill or the rules or regulations made or any directions issued thereunder. It further requires the managers, managing directors, officers and employees of the specified service provider or the related entity to preserve and produce to the Investigating Authority any specified books, registers, documents and records. It also subjects the Investigating Authority to the Banker's Book of Evidence Act, 1891, and requires him to furnish a report to the Corporation. It also empowers the Investigating Authority to keep such books and registers in its custody, and to examine persons and entities and requires such examination report to be recorded in writing and forwarded to the appropriate regulator.

*Clause 15* seeks to provide for the powers of the Corporation, pending an investigation. It empowers the Corporation to authorise any of its Members to carry out certain functions, *inter alia*, including restraining a specified service provider, or an office bearer of a specified service provider from carrying out any business activity; impounding and retaining the proceeds of an activity under investigation, and provisional attachment.

*Clause 16* seeks to empower the Corporation to conduct search and seizure in certain cases. It empowers the Corporation to authorise an officer to enter and search any building, break open the lock, seize books, accounts and other documents, and place marks of identification on the seized documents. It further authorises the Corporation, or its authorised officer to requisition the services of a police officer. It further provides that the Code of Criminal Procedure, 1973 shall apply on matters relating to such search and seizure.

*Clause 17* seeks to empower any officer or agent of the Corporation or of the appropriate regulator to enter the place of business of a specified service provider; to inspect any equipment and documents at the premises; and to call upon any employees of the specified service provider to furnish documents and information as may be required.

*Clause 18* seeks to provide that the Corporation shall exercise its investigation powers under clauses 14, 15, 16 and 17 only when the relevant specified service provider is classified to be at imminent or critical risk to viability under the Bill.

*Clause 19* seeks to empower the Corporation to constitute committees for the efficient discharge of its functions.

*Clause 20* seeks to provide that the Corporation or the appropriate regulator shall hold due consultations with all relevant stakeholders before making any regulations under the Bill and shall ensure transparency in the discharge of its powers and functions.

*Clause 21* seeks to provide that the Corporation shall create the following funds, namely, the Corporation Insurance Fund, the Corporation Resolution Fund and the

Corporation General Fund, for the purposes of providing deposit insurance, meeting expenses of the process of resolution, and for other functions. It further requires that the Corporation shall utilise the amounts in each fund only for the purpose for which the Fund was created.

*Clause 22* seeks to specify the fees to be paid to Corporation by all specified service providers for resolution and for administrative expenses. It further requires all insured service providers to additionally pay premium for the cover of deposit insurance under the Bill.

*Clause 23* seeks to provide for the payment of grants and loans to the Corporation, after due appropriation made by Parliament by law in this behalf, on such terms, as the Central Government may think fit, for being utilised for the purposes of this Bill.

*Clause 24* seeks to provide that the Corporation shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. It further provides that the accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by the Comptroller and Auditor-General of India in this behalf, together with the audit report thereon shall be forwarded annually to the Central Government who shall cause the same to be laid before each House of Parliament.

*Clause 25* seeks to provide that the Central Government may, in consultation with the appropriate regulator, designate a financial service provider, which meets such criteria as may be prescribed by the Central Government in consultation with the appropriate regulator, as a systemically important financial institution after giving such systemically important financial institution an opportunity of being heard. It further seeks to provide that any person designated as Domestic Systemically Important Bank by the Reserve Bank of India shall be deemed to be a systemically important financial institution for the purposes of the Bill, for a period of six months with effect from such date as the Central Government may, by notification, specify. It also empowers the Central Government to designate any holding, subsidiary or associate companies, or such other body corporate related to, or associated with the financial service provider as systemically important financial institutions, jointly with the financial service provider, or separately. It also provides that persons designated as such shall have a right of appeal to the Tribunal.

*Clause 26* seeks to provide that the provisions of the Bill shall apply to a systemically important financial institution, as if it were a specified service provider, whether or not it is a specified service provider. It further provides that every systemically important financial institution shall submit a restoration plan to the appropriate regulator and a resolution plan to the Corporation. It also seeks to provide that the regulation and supervision of systemically important financial institutions shall continue to be governed by the appropriate regulator with which the systemically important financial institution is registered, subject to the provisions of the Bill.

*Clause 27* seeks to empower the Central Government to de-designate a systemically important financial institution if it ceases to meet the criteria specified therein, for reasons to be recorded in writing.

*Clause 28* seeks to empower the Central Government to delegate its powers under Chapter III of the Bill (except the powers to prescribe rules or issue notifications), by an order published in the Official Gazette, to such person or committee as may be specified in the order.

*Clause 29* seeks to specify the liability of the Corporation in respect of insured deposits, and provides that the Corporation, in consultation with the appropriate regulator shall specify the amount to be paid to insured depositors. It further provides that the Corporation Insurance Fund shall be utilised for specified purposes, including the payment

in cases of liquidation; for payment under a scheme of compromise or arrangement or amalgamation sanctioned for an eligible co-operative bank; or a scheme of resolution, except bail-in; and that the payment out of the Corporation Insurance Fund will have priority over other claims in resolution.

*Clause 30* provides for the manner of payment of insurance deposits by the Corporation to the insured service providers, except in case of the liquidation, where the manner of payment by the Corporation shall be as laid down under clause 72 of the Bill.

*Clause 31* provides for the discharge of liability of the Corporation from the payment of deposit insurance, to the extent already paid by it under clause 29 of the Bill.

*Clause 32* seeks to provide for payments in cases where any depositor, to whom any payment is to be made in accordance with the provisions of clause 29 or clause 72, cannot be found or is not readily traceable.

*Clause 33* seeks to provide for registration of the specified service provider. It deems, every specified service provider under the Second Schedule to be registered under the Bill and provides that a holding company or the non-regulated operational entity within a financial group or conglomerate of the specified service provider which is classified into a category of risk to viability, shall be deemed to be registered from the date of such classification. It further deems, *inter alia*, a banking institution registered under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 to be registered as an insured service provider under the Bill. It also makes provision for the Corporation to maintain a register with such details and information, of each specified service provider.

*Clause 34* seeks to provide that notwithstanding the withdrawal or cancellation by the appropriate regulator of a specified service provider to carry on business, such entity shall be deemed to be a specified service provider for the purposes of the Bill. It further seeks to specify the circumstances in which the registration of an insured service provider shall be withdrawn, including, when there is a permanent prohibition on the receipt of fresh deposits; or when the insured service provider has ceased to be a banking company or a co-operative bank; or on the cancellation of the license of an insured service provider by the Reserve Bank of India; or on the appointment of a liquidator in respect of such insured service provider; or the non-payment of premium for three consecutive years by an insured service provider classified to be at imminent risk to viability. It also specifies cases where the Corporation, in consultation with the appropriate regulator may restore the registration of an insured service provider.

*Clause 35* seeks to provide that the withdrawal or cancellation of registration of the specified service provider or the insured service provider shall not entitle such specified service provider or insured service provider, as the case may be, to any refund for any fees or premia paid to the Corporation; or affect their liability for payment of premium or fees and of any interest due for the period before such withdrawal.

*Clause 36* seeks to specify the various stages of risk to viability, and provides some of the objective criterion for the classification of specified service providers by the Corporation and by the appropriate regulator, as the case may be, into low, moderate, material, imminent and critical risk to viability. It further specifies the factors to be considered for the classification, such as, capital, asset and liquidity adequacy, capability of the management, asset quality, earnings sufficiency, leverage ratio, risk of failure of a holding company, and the sensitivity of the covered service provider to adverse market conditions. It also provides that the classification by the Corporation or by the appropriate regulator shall be final and such classification shall be confidential, except the classification in the category of critical risk to viability.

*Clause 37* seeks to provide for consultation process to be followed by the Corporation and the appropriate regulator, in case of a difference in opinion over a classification, between the Corporation and the appropriate regulator. It further provides



that in case such a consultation process does not lead to a consensus over the assessment of the classification, the Corporation is empowered to conduct an independent inspection to confirm its view, with the appropriate regulator being present, if deemed necessary by the appropriate regulator. It also empowers the Corporation, after considering the comments of the appropriate regulator, to make a final determination of the imminent or critical risk to viability of the specified service provider.

*Clause 38* seeks to provide for the submission of a restoration plan to the appropriate regulator, and a resolution plan to the Corporation by a specified service provider classified in the category of material or imminent risk to viability, with a copy of every such plan being sent to the Corporation and the appropriate regulator, as the case may be, within ninety days of classification under clause 36. It further provides that a systemically important financial institution shall submit a resolution plan within ninety days of its designation as such by the Central Government.

*Clause 39* seeks to specify the information to be included in the restoration plan, which *inter alia*, include, the distinct identification of the assets and liabilities of a specified service provider; any contingent liabilities of the specified service provider; steps which the specified service provider shall take to qualify for classification in the category of at least moderate risk to viability and how such steps may result in such classification; and the period within which the entire restoration plan and each step of the plan will be executed. It further provides that a systemically important financial institution classified in the category of low or moderate risk to viability shall submit the information assuming that it is classified in the category of material or imminent risk to viability.

*Clause 40* seeks to specify the information to be included in the resolution plan, *inter alia*, including, the distinct identification of the assets and liabilities; any contingent liabilities of the specified service provider; distinct identification of critical functions of the specified service provider; direct or indirect access to financial market infrastructure services; and strategy plans to exit the resolution process which may provide for the consideration of legal or regulatory requirements as may be required by the Corporation to sell or transfer the assets and liabilities of the specified service provider, or change its ownership. It further empowers the Corporation to require a specified service provider to provide any information as may be necessary for the purpose of resolution, including any information required for the transfer or sale of the assets of the specified service provider.

*Clause 41* seeks to provide for every restoration plan and every resolution plan to be revised annually, and the Corporation and the appropriate regulator to be informed of such revised plan within seven days of the revision. It further provides that every material change in the restoration plan or the resolution plan shall be immediately informed to the appropriate regulator and the Corporation. It also provides that the appropriate regulator shall review the information provided in the restoration plan the Corporation shall review the resolution plan and if the appropriate regulator or the Corporation determines that the plan would not ensure restoration or resolution within a reasonable period, it shall inform the specified service provider of such deficiency, and the specified service provider shall re-submit the restoration plan or the resolution plan within such period as may be directed by the appropriate regulator or the Corporation, as the case may be. It also provides that the appropriate regulator or the Corporation may, if considered necessary in the interest of restoration or of resolution of the specified service provider, modify such deficient restoration plan or the resolution plan and such modified plan shall be binding on the specified service provider.

*Clause 42* seeks to provide that the appropriate regulator may carry out additional inspections to monitor the risk to viability where a specified service provider is classified to be at material risk to viability. It further empowers the appropriate regulator to prevent,

by order, the specified service provider, from various actions, namely, accepting funds, payment of dividends to shareholders, acquiring any interest or establishing new locations of carrying out business. It also empowers the appropriate regulator to require the specified service provider to increase the capital, issue new securities, sell identified assets and take other required actions.

*Clause 43* seeks to specify the various circumstances under which the appropriate regulator or the Corporation is empowered to classify a specified service provider to be at imminent risk to viability, including, non-submission of restoration plan or resolution plans, fraud in the business, etc. It further provides that upon such classification, the Corporation may prevent such specified service provider from undertaking various actions like accepting funds, declaration of payment of dividends, etc. It also empowers the Corporation to require the specified service provider to increase its capital, issue new securities and sell identified assets. It also provides that any classification of a central counterparty in the category of imminent risk to viability shall only be made by the appropriate regulator, which shall record its reasons for such classification and inform the Corporation within fifteen days of the classification. It also provides that in respect of a specified service provider classified in the category of imminent risk to viability or critical risk to viability, the appropriate regulator shall exercise its powers under the law regulating such specified service provider, notwithstanding anything to the contrary in such law, to the extent it is not inconsistent with the provisions of the Bill.

*Clause 44* seeks to provide for certain additional powers of the appropriate regulator, with respect to central counterparties which are classified at material or imminent risk to viability, including taking measures such as to allocate uncovered losses caused by participant default, to address uncovered liquidity shortfalls, to replenish financial resources, to re-establish a matched book, set-off, close-out, netting and collateralisation, amongst others.

*Clause 45* seeks to provide that a specified service provider may be classified to be at critical risk to viability by the appropriate regulator or by the Corporation, through an order and the provisions of Chapters X, XI and XII shall apply to the specified service provider on the date of such classification. It further provides that on such classification, the Corporation shall be deemed to be an administrator and prohibits, *inter alia*, continuance of legal actions and proceedings against the specified service provider, till such period as may be specified in the order, or until conclusion of resolution, or until the date of the order appointing the Corporation as the liquidator. It further provides that the Corporation shall make payment of deposit insurance in accordance with the provisions of clause 29. It also empowers the appropriate regulator to withdraw or modify authorisations or licenses of the specified service provider to carry out any financial service.

*Clause 46* seeks to provide that a specified service provider shall not be classified in the category of material or imminent or critical risk to viability without issuance of a show cause notice and affording of an opportunity to be heard to the specified service provider.

*Clause 47* seeks to provide that entry into resolution of a specified service provider shall not cause early termination of a specified contract so long as the substantive obligations of the contract continue to be performed subject to such safeguards, notwithstanding the provisions relating to netting and set-off under the Payments and Settlement Systems Act, 2007, the Reserve Bank of India Act, 1934 and the Securities (Contracts) Regulation Act, 1956. It further provides that if a termination right under a specified contract becomes exercisable, the Corporation shall have the power, subject to such safeguards, to temporarily stay the exercise of such rights of any party to a specified contract with the specified service provider or its subsidiary if the relevant termination

right is exercisable solely on entry into resolution or in connection with the exercise of any resolution power, except liquidation, in respect of such specified service provider or its subsidiary, under this Bill.

*Clause 48* seeks to provide the various methods of resolving a specified service provider classified in the category of critical risk to viability through a scheme or a bail-in instrument. It empowers the appropriate regulator to classify an insurance company as a run-off entity and to allow the present insurance policies to run to their expiration dates and to sell or transfer the portfolios of an insurance company to another insurance company or a run-off entity. It further provides that no such scheme shall be made by the Corporation unless the proposed transferee entity has obtained the consent of the appropriate regulator in this regard. It also provides that a scheme made under this clause shall have regard to the treatment of all liabilities of the specified service provider in accordance with the priority they would have in liquidation; and the treatment of such persons affected adversely by the order of classification in the category of critical risk to viability, in accordance with the priority they would have on a liquidation, to bear losses on an equal footing with each other, except in such circumstances as the Corporation may, for the reasons to be recorded in writing, specify.

*Clause 49* seeks to specify the matters which may be contained in scheme of resolution prepared under clause 48 including, *inter alia*, details about the constitution, name and registered office, assets, rights, interest, transfer of properties, assets and liabilities to the transferee specified service provider, a change in the board of directors, alteration of the memorandum and articles of association of the specified service provider and reduction of interest or rights of the members, depositors and other creditors against the specified service provider. It further provides that the contents of the scheme may be.

*Clause 50* seeks to provide for the creation of a bridge service provider and to transfer the assets and liabilities of a specified service provider under resolution to such bridge service provider, with the aim of eventual resolution. It provides that the Corporation shall resolve the bridge service provider as expeditiously as possible, and in any event, within one year from the date of its incorporation. It further provides that the Corporation shall resolve the bridge service provider by transferring, by way of a scheme, the whole or any part of the assets, liabilities, businesses, properties or undertakings of the bridge service provider to another person capable of providing the services of a specified service provider, on such terms as may be agreed between the Corporation and such person; or by sale, by way of a scheme under section, of the shares of the bridge service provider constituting more than three-fourths of the equity capital of the bridge service provider; or by liquidation of the bridge service provider under the Bill.

*Clause 51* seeks to provide the Corporation with the power of claw-back of performance incentive, requiring the return of certain performance based remuneration of senior management of a specified service provider under resolution, through an order in writing, after giving a reasonable opportunity of being heard to the person concerned. It provides that an officer of a specified service provider shall be subject to such order if the officer acted, or omitted to act in a manner that caused, or materially contributed to, the specified service provider to be classified in the category of critical risk to viability; and the act was done, or the omission was made, intentionally, recklessly or negligently. It further requires the Corporation to ensure the proportion of performance based incentive which is to be returned is commensurate with the act or omission.

It also provides that no payment made before three years from the date on which the specified service provider was classified in the category of critical risk to viability, shall be required to be returned to the specified service provider.

*Clause 52* gives the Corporation the power to carry out bail-in, as a method of resolution, either through a bail-in instrument or a scheme made specifically for this

purpose. It empowers the Corporation to cancel a liability, and to modify or change the form of a liability, including the power to convert an instrument from one class to another, replace an instrument with another, create a new security, and for central counterparties specifically, direct a haircutting of collaterals and margins, and the issuance of equity to creditors. It also specifies which liabilities the bail-in instrument or scheme will not affect. It also provides that the appropriate regulator in consultation with the Corporation, shall require certain specified service providers to maintain liabilities that may be subject to bail-in and for the bail-in instrument to contain a specific provision clarifying that such liabilities may be subject to bail-in. It also requires the Corporation to forward the bail-in instrument to the Central Government together with a report stating the reasons for making such an instrument or scheme, along with its effects and a copy of the said report be laid before each House of Parliament by the Central Government.

*Clause 53* seeks to provide that the Corporation may use a bail-in instrument, *inter alia*, to cancel or modify securities to which clause 52 applies, convert such securities from one form or class to another, or make a provision with respect to their rights, provide for their listing or transfer or make other provisions in their regard.

*Clause 54* seeks to provide that where the Corporation has made a provision for transfer of securities in the bail-in instrument under clause 53, the Corporation may make one or more onward transfer bail-in instruments by providing for a transfer of securities issued by the specified service provider, before or after the issuance of the instrument and the form and manner of the bail-in instrument under clause 52 shall apply to the onward transfer bail-in instrument.

*Clause 55* seeks to provide for safeguards while carrying out resolution, such as, ensuring the continuity of critical functions of the specified service provider; ensuring that no creditor of the specified service provider is left in a worse position as a result of application of any method of resolution, than such creditor would have been in the event of its liquidation; protecting the client funds, and client assets of the specified service provider, to no less an extent than they would be protected in liquidation; and such other safeguards as may be specified by regulations made by the Corporation. It further provides for certain additional safeguards for the use of bail-in as a method of resolution, such as, cancellation of the liabilities of any specified service provider to be done in accordance with the order of priority laid down in clause 80 where the instrument creating it contains a provision to the effect that the parties to the contract agree to the liability being eligible for a bail-in; equal treatment to be given to all rights and liabilities of the same class; and such other safeguards as may be specified by regulations made by the Corporation in consultation with the appropriate regulator. It also provides that the Corporation shall, while exercising its powers, take measures to ensure the protection of such collateral arrangements, set-off or netting arrangements.

*Clause 56* seeks to specify the time limit for resolution. It provides that resolution specified service provider shall be completed expeditiously and not later than one year from the date on which such specified service provider is classified to be at critical risk to viability which may be extended by the Corporation, by an order, for a further period not exceeding one year for reasons to be recorded in writing. It further provides that one year time limit shall not be applicable in case of liquidation. It also provides that in case resolution is not completed within the specified time, the Corporation shall liquidate such specified service provider under Chapter XII. It also empowers the Corporation to specify different time periods for resolution of specified service provider, depending on the process of resolution, the size and complexity of the specified service provider.

*Clause 57* seeks to provide that the supply of services relating to the continuance of the critical functions of the specified service provider or any other person as determined by the Corporation shall not be terminated, suspended or interrupted during the resolution of such specified service provider.

*Clause 58* seeks to provide that the Corporation shall be the administrator from the date the specified service provider is classified in the category of critical risk to viability and all powers over the management of the relevant specified service provider, including exercise of all powers of its board of directors shall vest in the Corporation. It further provides that Corporation shall act and execute decisions on behalf of the relevant specified service provider, including authority to access books of account, electronic records, and the power to resolve the specified service provider, except by way of liquidation. It also specifies certain restrictions on the specified service provider which is under administration. It also lays down certain curbs on the specified service provider which is under administration and provides for certain additional measures that the Corporation may take, in consultation with the appropriate regulator, in the case of central counterparties, including measures to allocate uncovered losses, address uncovered liquidity shortfalls, replenish financial resources, re-establish a matched book, issuance of equity to creditors, and imposing a temporary stay on early termination rights. It also provides that the Corporation may, subject to the provisions of clauses 48 and section 49, place the specified service provider, except a central counterparty, in liquidation in accordance with the provisions of Chapter XII.

*Clause 59* seeks to provide for the functions of the Corporation as an administrator, such as, taking control and custody of certain assets of the specified service provider; and performing such other functions as may be laid down in regulations by the Corporation.

*Clause 60* seeks to empower the Corporation to remove from office any Chairperson, director, chief executive officer or other officer or employee of the specified service provider which has been classified in the category of imminent risk to viability or critical risk to viability, as the case may, by giving reasons in writing, after affording a right of hearing to such persons. It also provides for a right of appeal against the order of removal to the Appellate Tribunal.

*Clause 61* seeks to empower the Corporation to appoint additional directors, for specified service providers classified in the category of imminent or critical risk to viability. It provides that such directors shall hold office during the pleasure of the Corporation and they shall not incur any liability or obligation by reason only of being a director or for anything done or omitted to be done in good faith in the execution of the duties of the office or in relation thereto. It further provides that such directors shall not hold qualification shares in the specified service provider. It also provides that for the purpose of reckoning any proportion of the total number of directors of the specified service provider, any additional director appointed under this clause shall not be taken into account.

*Clause 62* seeks to empower the Corporation to supersede the board of directors of a specified service provider classified in the category of imminent or critical risk to viability, for a period not exceeding two years, as may be specified in the order and to appoint an administrator for such an entity. It further provides that upon such supersession, the Chairperson, managing director, and other directors shall vacate their offices, and the powers, functions and duties of the board of directors shall be exercised by the administrator. It also empowers the Corporation to constitute a committee to assist the administrator in discharge of his duties. It also requires the administrator to vacate his office immediately after the board of directors of the specified service provider has been constituted.

*Clause 63* seeks to provide that where the Corporation determines liquidation to be the most appropriate method for the resolution of a specified service provider, it shall make an application to the Tribunal for an order of liquidation in respect of such specified service provider and the Tribunal shall pass an order of liquidation appointing the Corporation as a liquidator for a specified service provider and the Corporation may designate any of its officers as the liquidator. It also provides that the order of liquidation



may prohibit the commencement or continuance of all legal actions and proceedings against such specified service provider, till the continuance of the period of liquidation. It also provides that on the appointment of the liquidator, all powers of the board of directors, key managerial personnel and the partners of the specified service provider, shall cease to have effect and shall vest in the liquidator. It also provides that any person aggrieved by the order of the Tribunal may, within thirty days from the receipt of the order, prefer an appeal to the Appellate Tribunal and any person aggrieved by an order of the Appellate Tribunal may, within forty-five days from the date of receipt of the order, prefer an appeal to the Supreme Court on a question of law arising out of such order. It also deems the order of liquidation to be a notice of discharge to the officers, employees and workmen of the specified service provider, except when the business of the specified service provider is continued during the liquidation process by the liquidator.

*Clause 64* seeks to provide that on the appointment of the Corporation as the liquidator, the liability of an insured service provider to pay premium under clause 21 shall cease.

*Clause 65* seeks to bar the jurisdiction of any court or tribunal other than the Tribunal in any proceeding for liquidation of a specified service provider and provides for the transfer of proceedings to the Tribunal. It further bars the institution of any suit or legal proceeding against the specified service provider before any other court or authority other than the Tribunal, when an order of liquidation has been passed, except with the prior approval of the Tribunal. It also provides that nothing in this clause shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

*Clause 66* seeks to specify the various powers of the Corporation as a liquidator, which *inter alia*, include, the power to verify claims of the creditors, carry on the business of the covered service provider under liquidation, sell the properties and claims of such a covered service provider, institute or defend suits and other legal proceedings, apply to the Tribunal for necessary orders or directions, and to perform all other functions prescribed by the Central Government.

*Clause 67* seeks to provide that the liquidator shall, for the purposes of liquidation, form an estate of the assets which shall be called the liquidation estate in relation to the specified service provider and the liquidator shall hold the liquidation estate as a fiduciary. It further specifies the assets which shall comprise the liquidation estate and the assets which shall not be included in the liquidation estate for the purposes of recovery in the liquidation. It also provides that the payments and recoveries with regard to central counterparties shall be made in accordance with the, rules, bye-laws or regulations of the central counter party and such liabilities shall be discharged before making any distributions under clause 80.

*Clause 68* seeks to provide that the liquidator shall have the power to access any information system for the purpose of admission and proof of claims and identification of the liquidation estate assets relating to the specified service provider. It further provides that the liquidator shall provide the information to creditors who have requested for such information within a period of seven days from the date of such request or provide reasons for not providing such information.

*Clause 69* seeks to provide for the liquidator to receive or collect the claims of all consumers and creditors within a period of ninety days from the date of the commencement of the liquidation process. It further provides that a depositor or operational creditor shall submit a claim to the liquidator to prove the claim and deems every depositor of a specified service provider which is a banking institution to have submitted its claim for the amount shown in the books of the specified service provider as standing to its credit and the liquidator shall presume such claims to have been proved, unless it has reason for doubting its correctness. It also provides that a creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to

the extent of the financial debt and the operational debt. It also provides that a creditor may withdraw or vary his claim within fourteen days of its submission.

*Clause 70* seeks to provide for the verification of claims submitted under clause 69 and empowers the liquidator to require any creditor or the specified service provider or any other person to produce any other document or evidence which in the opinion of the liquidator is necessary for the purpose of verifying the whole or any part of the claim.

*Clause 71* seeks to empower the Tribunal to make a call on, and order payment by any contributory, if such contributory has been placed on the list of contributories by the liquidator and has not appeared to dispute his liability.

*Clause 72* seeks to provide for the manner of payment of deposit insurance by Corporation in case of liquidation. It provides that the deposit of each depositor shall be paid directly to the depositor, or through an agency and the expenses incurred by the liquidator in making such payments shall be treated as expenses incurred in the liquidation of the insured service provider.

*Clause 73* seeks to lay down the procedure for the admission and rejection of claims. It provides that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection and where the liquidator has accepted the claims made by the depositors, it shall proceed to pay out any amounts covered under deposit insurance in such manner as may be specified by regulations made by the Corporation.

*Clause 74* seeks to make provision for an appeal before the Tribunal by a creditor or depositor aggrieved by the decision of the liquidator rejecting the claims under clause 73, within a specified time.

*Clause 75* seeks to provide that the liquidator shall determine the value of claims admitted under clause 73 in such manner as may be specified by regulations made by the Corporation.

*Clause 76* seeks to specify the documents of a specified service provider that can be admitted in evidence.

*Clause 77* seeks to provide for public examination of directors and auditors of a specified service provider being liquidated by the Corporation. It provides that if the liquidator is of the opinion that any promoter or any person who has taken part in the conduct of business of the specified service provider or has been a director or an auditor of the specified service provider should be publicly examined, it may file an application before the Tribunal to hold a public sitting on a date to be appointed for that purpose and thereupon, the Tribunal may direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the specified service provider, or as to his conduct and dealings, provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be examined. It further provides that any creditor or contributory may take part in the examination either personally or through a person entitled to appear before the Tribunal. It also seeks to provide that if the person being examined is exculpated from any charges made or suggested against him, the Tribunal may allow him such costs in its discretion as it may deem fit; and where on such examination, the Tribunal is of the opinion, whether or not a fraud has been committed, that the person, who has been a director of a specified service provider, is not fit to be a director of a specified service provider, or that the person, who has been an auditor of a specified service provider or a partner of a firm acting as such auditor, is not fit to act as an auditor of a specified service provider or to be a partner of a firm acting as such auditor, the Tribunal may make an order that the person shall not, without the leave of the Tribunal, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any specified service provider or, as the case may be,



act as an auditor of, or be partner of a firm acting as auditors of any specified service provider, for such period not exceeding five years, as may be specified in the order.

*Clause 78* seeks to empower the Tribunal in a liquidation proceeding to inquire into the conduct of the person, who is or has been a director, manager, or officer of the specified service if such person has misapplied, or retained, or become liable or accountable for, any money or property or has been guilty of any misfeasance or breach of trust in relation to the specified service provider, and order him to repay or restore the money or property or any part thereof, with interest at such rate, or to contribute such sum to the assets of the specified service provider by way of compensation in respect of such misapplication or retention of any money or property or any misfeasance or breach of trust, in relation to the specified service provider. It further provides that if the specified service provider under liquidation is a banking institution, the Tribunal may make an order for the repayment, restoration, and even attachment of the money and property.

*Clause 79* seeks to provide for realisation of security interest of a secured creditor in a liquidation proceeding. It provides that the secured creditor may choose to relinquish its security interest to the liquidation estate and participate in the distribution of assets or realise its security interest outside the liquidation proceedings. It further provides that a secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as may be applicable to the security interest being realised to the secured creditor and apply the proceeds to recover the debts due to it. It also provide that if in the course of realising a secured asset, any secured creditor faces resistance from the specified service provider or any person connected therewith in taking possession of, selling or otherwise disposing of the security, the secured creditor may make an application to the Tribunal for an order to realise such security interest in accordance with the law for the time being in force and the Tribunal may pass such order as may be necessary to permit a secured creditor to realise security interest. It also provides that the amount of resolution costs payable by the secured creditor shall be deducted from the realised proceeds and where there is a surplus realised from the enforcement of a security interest, the secured creditor shall account for the same to the liquidator. It also provides that if the proceeds of the realisation of the secured assets are not sufficient to repay the debts owed to the secured creditor, the creditor may claim the same in accordance with the priority of payments under clause 80 for such unpaid portion.

*Clause 80* seeks to provide for distribution of assets in liquidation. It provides that notwithstanding anything in any other law for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the order of priority specified in sub-clause (I). It further provides that any contractual arrangements between recipients with equal ranking, if disrupting the order of priority under sub-clause (I) shall be disregarded by the liquidator. It also provides that the fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients and the proceeds to the relevant recipient shall be distributed after such deduction.

*Clause 81* seeks to provide for the dissolution of the specified service provider. It provides that once the affairs of the specified service provider have been wound up and its assets completely liquidated, the liquidator will make an application to the Tribunal for the dissolution of the specified service provider and the Tribunal shall order that the specified service provider shall be dissolved from the date of that order and the specified service provider shall be dissolved accordingly.

*Clause 82* seeks to provide for the avoidance by the liquidator of a preferential transaction in certain transactions. It provides that a specified service provider shall be deemed to have given a preference, if there is a transfer of property or an interest thereof of the specified service provider for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed

by the specified service provider; and such transfer has the effect of putting such creditor or a surety or a guarantor in a more beneficial position than it would have been in the event of a distribution of assets being made in accordance with clause 80. It also prohibits avoidance of transaction at a relevant time and deems a preference to be given at a relevant time, if it is given to a related party (other than by reason only of being an employee), during the period of two years preceding the liquidation commencement date; or a preference is given to a person other than a related party during the period of one year preceding the liquidation commencement date.

*Clause 83* seeks to empower the Tribunal, to pass orders in relation to the avoidance of a preferential transaction, which have the effect of reversing the preferential transaction, and requiring the person to whom the preference is granted, to pay back any gains he may have made as a result of such preference. It further deems a person who has acquired an interest in property from another person other than the specified service provider, or who has received a benefit from the preference or such another person to whom the specified service provider gave the preference, to have acquired such interest or received the benefit otherwise than in good faith unless the contrary is shown, if he had sufficient information of the initiation or commencement of liquidation process of the specified service provider or is a related party. It also provides that a person shall be deemed to have sufficient information or opportunity to avail such information if an order of liquidation has been made under clause 63.

*Clause 84* provides for the avoidance of undervalued transactions such as gifts, or transactions where the value of the consideration received by the specified service provider is significantly less than the value provided by such specified service provider. It provides that the liquidator shall make an application to the Tribunal to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

*Clause 85* seeks to provide that in an application for avoiding a transaction which has been undervalued, the liquidator shall demonstrate that such transaction was made with any person within the period of one year preceding the liquidation commencement date; or such transaction was made with a related party within the period of two years preceding the liquidation commencement date. It empowers the Tribunal to require an independent expert to assess evidence relating to the value of the transactions.

*Clause 86* seeks to permit the creditors, shareholders or partners of the specified service provider to make an application to the Tribunal for setting aside an undervalued transaction where the liquidator has not reported such transaction to the Tribunal. It provides that the Tribunal shall pass an order restoring the position as it existed before such transactions and reversing the effects thereof, if after examination of the application, it is satisfied that undervalued transactions had occurred and the liquidator after having sufficient information or opportunity to avail information of such transactions did not report such transactions to the Tribunal.

*Clause 87* seeks to provide that the order of the Tribunal setting aside the undervalued transaction shall have the effect of reversing the undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transaction.

*Clause 88* seeks to provide that where the Tribunal is satisfied that the specified service provider had deliberately entered into undervalued transaction for keeping assets of the specified service provider beyond the reach of any person who is entitled to make a claim against the specified service provider; or in order to adversely affect the interests of such person in relation to the claim, it shall make an order restoring the position as it existed before such transaction as if the transaction had not been entered into and for protecting the interests of persons who are victims of such transactions.

*Clause 89* seeks to empower the liquidator to make an application to the Tribunal for avoidance of extortionate credit transaction where the specified service provider has been a party to an extortionate credit transaction involving a financial or operational debt during the period within two years preceding the liquidation commencement date, the if the terms of such transaction required exorbitant payments to be made by the specified service provider. It also seeks to clarify that any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall not be considered as an extortionate credit transaction.

*Clause 90* seeks to empower the Tribunal to pass orders relating to extortionate credit transactions, including, to restore the position as it existed prior to such transaction or to set aside the whole or part of the debt created on account of the extortionate credit transaction, if it is satisfied that the terms of a credit transaction required exorbitant payments to be made by the specified service provider.

*Clause 91* seeks to empower the Corporation, on being appointed as a liquidator or as an administrator, to require parties related to the specified service provider to continue to provide such services or honour such contracts as the Corporation may direct, for a period not exceeding two years from the date of such appointment, for effective resolution of the specified service provider.

*Clause 92* seeks to provide that the appropriate regulator shall provide necessary assistance and co-operation to the Corporation in the discharge of its duties under Chapter XII. It also requires the District Magistrate, on a request in writing by the Corporation, to take possession of the property, books of accounts or other documents within his jurisdiction; and to forward them to the Corporation; or to sell such property and effects by public auction and forward the net proceeds of the sale to the Corporation. It further requires the District Magistrate to provide necessary assistance and co-operation to the Corporation in the discharge of its duties under the said Chapter.

*Clause 93* seeks to permit a specified service provider classified in the category of low or moderate risk to viability to close its business and liquidate itself voluntarily under section 59 of the Insolvency and Bankruptcy Code, 2016, subject to such conditions as may be specified by regulations made by the appropriate regulator. It seeks to prohibit voluntary liquidation by a specified service provider classified in the category of material or higher risk to viability.

*Clause 94* seeks to prohibit the Tribunal from entertaining any petition for winding up of a specified service provider, or a bridge service provider, under section 271 of the Companies Act, 2013, except on a report from the Corporation that such a specified service provider should be liquidated. It further provides that upon submission of the report by the Corporation, if the Tribunal is satisfied that the specified service provider has to be liquidated, it shall appoint the Corporation as the liquidator.

*Clause 95* seeks to empower the Central Government to enter into an agreement with the Government of any country outside India for enforcing the provisions of the Bill. It further empowers the Corporation, with due approval of the Central Government, to enter into memorandum of understanding with other international organisations and authorities, to share information on a reciprocal basis. It also provides for maintenance of confidentiality by all the parties involved. It also requires the Tribunal, on an application to that effect by the Corporation, to issue a letter of request to be sent to foreign courts and authorities, for seeking evidence or action relating to assets situated in that country.

*Clause 96* seeks to provide for the recognition and enforcement or refusal of recognition and enforcement of foreign resolution actions. It provides that that the Corporation may, subject to any agreement or memorandum of understanding entered into by the Central Government or the Corporation under clause 95, make an order of recognition or enforcement of a foreign resolution action, provided the foreign resolution action shall not be in derogation of the safeguards contained in clause 55 of the Bill in

relation to the Indian stakeholders affected by such resolution action; and that the creditors of the specified service provider in India shall have the first charge on the assets of the specified service provider in relation to which such recognition and enforcement order is being made. It further provides that the Corporation may refuse to recognise and enforce a foreign resolution action where the action could have an adverse impact on the financial stability of India, or may be inconsistent with the objectives of the Bill or be opposed to public policy or be inconsistent with the laws of India or where an independent resolution action by the Corporation in India is considered necessary to secure the objectives of the Bill.

*Clause 97* of the Bill seeks to provide for the rights of the local creditors in certain cases. It empowers the appropriate regulator to initiate resolution against a branch office of a body corporate incorporated outside India, whose branch office in India is a specified service provider, in the event of a foreign resolution action, subject to any memorandum of understanding or agreement referred to in clause 95. It provides that such branch office may be classified in the category of critical risk to viability by the appropriate regulator, and resolved in accordance with the provisions of the Bill; and in such case, the creditors of the specified service provider in India shall have first charge on the assets of the specified service provider for the purpose of resolution or liquidation under the Bill.

*Clause 98* seeks to specify punishment for wilful concealment, fraudulent removal, destruction, mutilation, falsification, concealment of knowledge, or the creation of a security interest in relation to a property of a specified service provider, by any officer of the specified service provider if such officer has committed any of those acts within the twelve months immediately preceding the date of the order of liquidation; or at any time after the date of the order of liquidation, committed any of the acts or has the knowledge of the doing by others of those acts; or at any time after the date of order of liquidation taken in pawn or pledge, or otherwise received the property knowing it to be so secured, transferred or disposed. It provides that such officer shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both. It also provides that nothing in this clause shall render a person liable to any such punishment if he proves that he had no intent to defraud or to conceal the state of affairs of the specified service provider.

*Clause 99* seeks to specify punishment for transactions defrauding creditors of a specified service provider on or after the date of the order of liquidation, by an officer of the specified service provider or the specified service provide either by making or causing to be made any gift or transfer of, or charge on, or causing or conniving in the execution of a decree or order against, the property of the specified service provider; or by concealing or removing any part of the property of the specified service provider within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the specified service provider. It provides that such officer of the specified service provider or the person in control of such specified service provider shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both. It also provides that nothing in this clause shall render a person liable to any such punishment if the acts were committed more than five years before the date of the order of liquidation, or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the specified service provider.

*Clause 100* seeks to specify punishment for any misconduct in the course of liquidation of a specified service provider or a bridge service provider, such as, non-disclosure to the Corporation, with respect to the details of the property of the specified service provider, or of books and accounts in the officer's custody; for the prevention of

the production of books and papers, and the failure to inform the Corporation of any debt falsely proven by any person during liquidation, by either an officer of the specified service provider, or the bridge service provider. It provides that such officer shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both. It further provides that nothing in this clause shall render a person liable to any punishment, if he proves that he had no intent to do so in relation to the state of affairs of the specified service provider.

*Clause 101* seeks to specify punishment for the falsification of books of a specified service provider. It provides that on and after the date of the order of liquidation, where any person destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is in the knowledge of making of any false or fraudulent entry in any register, books of accounts or document belonging to the specified service provider with an intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

*Clause 102* seeks to specify punishment for wilful and material omissions from statements relating to the affairs of a specified service provider. It provides that where an officer of the specified service provider makes any material and wilful omission in any statement relating to the affairs of the specified service provider, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five

*Clause 103* seeks to specify punishment for a contravention of prohibition under clause 45 and clause 63 of the Bill. It provides that any such officer who knowingly or wilfully committed or authorised or permitted such contravention, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to three lakh rupees, or with both. It further provides that any person who knowingly and wilfully authorised or permitted such contravention by a creditor, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

*Clause 104* seeks to specify punishment for interference in investigation in contravention of clause 14, making such offence punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to twenty-five crore rupees, or with both, and if the contravention is a continuing one, with a further fine which may extend to ten lakh rupees for every day after the first during which the contravention continues, if such person fails without reasonable cause or refuses to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record or to furnish any information, or fails or refuses to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him in pursuance thereof.

*Clause 105* seeks to specify other offences for which any employee, manager, or person in control of a specified service provider shall, in addition to the payment of any amount disgorged, be punishable with imprisonment for a minimum period of three years, extending up to five years, or with fine for a minimum amount of one lakh rupees, extending up to one crore rupees. It further provides that any person who assists a person in committing any such offence or knowingly accepts or deals in any asset of a specified service provider which is in resolution; or causes any asset of a specified service provider in resolution to be hidden from the Corporation, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years,



and with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees. It also specifies punishment for offences, including, wilfully making a false statement of a material particular, failure to produce books, accounts, documents, statements and information under the Bill.

*Clause 106* seeks to provide that where an offence has been committed by a company, every person who was in charge of the company for the conduct of business, or with whose consent or connivance such default occurred, shall be liable for prosecution, and punishment accordingly. It further provides that an offence punishable under the Bill will be deemed to have been committed at the place where the registered office, or the principal place of business in India, of the company is situated.

*Clause 107* seeks to provide that any person who deliberately contravenes any of the provisions of the Bill or the rules or regulations made thereunder, shall be liable to a penalty which shall not be less than the amount of unlawful gains accrued out of such contravention, but which may extend to three times the said amount of unlawful gains or twenty-five crore rupees, whichever is higher. It further provides that any person who by gross negligence or any person related to the specified service provider, who violates any order, regulation or rule under this Act, shall be liable to a penalty which may extend up to two times the amount of unlawful gains accrued out of such violation or extend up to five crore rupees, whichever is higher.

*Clause 108* seeks to specify the penalties in relation to restoration and resolution plans, including, for non-submission, failure to intimate material changes, and non-revision of the plans by the relevant specified service providers and the systemically important financial institutions, as the case may be.

*Clause 109* seeks to empower the Corporation and the appropriate regulator to appoint an adjudicating officer to impose penalty under clauses 107 and 108 of the Bill. It provides that the adjudicating officer shall hold inquiries, summon and enforce attendance of persons, and impose penalty, after giving the relevant specified service provider and the person an opportunity of being heard. It further empowers the Corporation or the appropriate regulator, as the case may be, to call for and examine the records of such proceedings. It also specifies certain factors for the adjudicating officer to consider for deciding the quantum of penalty to be levied, including amongst others, the nature and seriousness of the violation committed, the repetitive nature of the violation, and the consequences and impact of the violation.

*Clause 110* seeks to specify the manner of recovery of penalty. It provides that if any person fails to comply with an order issued under Chapter XV requiring him to pay any amount by way of penalty, the Corporation may, by order in writing, recover the amount of penalty in accordance with the provisions of the Second Schedule to the Income-tax Act, 1961.

*Clause 111* seeks to provide for an appeal to the Tribunal against an order of penalty under clause 109. It provides that such appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Corporation or the appropriate regulator is received by the aggrieved person.

*Clause 112* seeks to provide for trial of offences by the Special Court established under section 435 of the Companies Act, 2013 and bars any court from taking cognizance of any offence under the Bill, except on the complaint in writing made by the Central Government, Corporation or any person authorised by the Central Government in this behalf. It further provides that the provisions of the Code of Criminal Procedure, 1973 will apply to the proceedings before a Special Court. It also provides that where the complainant under is the Central Government or Corporation or an officer authorised by the Central Government, the presence of such officer before the court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

*Clause 113* seeks to confer on the special Court all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

*Clause 114* seeks to provide for making an application to the Tribunal for compensation by any person aggrieved by a resolution action of the Corporation. It requires the Tribunal, on receipt of such application, to appoint an independent valuer to assess whether the said person received a less favourable treatment in resolution, than what would have been received if the specified service provider had been liquidated.

*Clause 115* seeks to provide that Corporation and the specified service provider shall provide records, documents, and information to the independent valuer, as may be required for the purposes of valuation.

*Clause 116* seeks to provide that the independent valuer appointed under clause 114 shall submit a valuation report specifying the assessments undertaken, and determination of the compensation to be awarded, with the copies of the report being forwarded to all the parties involved, including the applicant, the Corporation and the Tribunal. It further provides that Tribunal may by an order in writing, direct the valuer to reconsider the valuation report or any aspect thereof and submit a revised report or replace the valuer, and pass such other orders as may be required.

*Clause 117* seeks to provide that the independent valuer shall maintain confidentiality in respect of any information relating to the relevant specified service provider, its customers, and the Corporation, unless it is required by any law to divulge the information and the obligation to such maintain confidentiality shall continue after the independent valuer has ceased to perform his functions.

*Clause 118* seeks to empower the Tribunal to direct the Corporation to pay such compensation to the applicant from the Corporation Resolution Fund, as the Tribunal deems fit.

*Clause 119* seeks to provide for an appeal to the Appellate Tribunal, against any decision of the Tribunal for compensation under clause 118. It further provides that any decision taken under the Chapter XVI on compensation shall not affect any action taken under Chapters IX, X and XI of the Bill, except to the extent provided under the said Chapter on compensation.

*Clause 120* seeks to provide for the continuation of deposit insurance for existing eligible co-operation banks for two years from the date of commencement of the Bill, which may be extended by a further period not exceeding one year, or until the law governing such eligible co-operative bank meets with the requirements of the Bill, whichever is earlier. It further provides that if on the expiry of the said period, the law for the time being governing the co-operative bank fails to meet the requirements of the Bill, the co-operative bank shall cease to be an insured service provider.

*Clause 121* seeks to specify the circumstances in which the winding up of co-operative banks can be sought under the Bill, which include, amongst others, non-compliance, or disentitlement, or prohibition with respect to receiving fresh deposits under certain provisions of the Banking Regulation Act, 1949 and inability to pay debts.

*Clause 122* seeks to provide for repayment of amount paid under clause 30, or clause 72, or provision for which has been made under clause 32, to the Corporation. It provides that the liquidator shall repay to the Corporation out of the amount, if any, payable by him in respect of any deposit, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit. It further provides that where the Corporation has been appointed as the liquidator, repayment to the Corporation may be by way of an adjustment to the funds of the Corporation. It also provides that the insured service provider or, the transferee insured service provider, as the case may be,



shall repay to the Corporation out of the amount, if any, to be paid or credited in respect of any deposit after the date of the coming into force of the scheme referred to in clause 30, such sum as to make up the amount paid or provided for by the Corporation in respect of that deposit.

*Clause 123* seeks to provide that every member, officer or employee, or independent valuer or any other person whose services are utilised by the Corporation shall, before entering upon his duties, make a declaration of fidelity and secrecy in the form set out in the Third Schedule.

*Clause 124* seeks to provide that the Corporation or the appropriate regulator shall not divulge any information relating to any specified service provider or its consumers, except as otherwise required by clause 128, or under any other law for the time being in force, except in circumstances in which it is necessary in accordance with that law or when so authorised by the Bill. It further provides that no court, tribunal or other authority shall compel the Corporation or the appropriate regulator to produce, or to give information on any inspection relating to a specified service provider or its consumers, by the Corporation, or the appropriate regulator, as the case may be, under the Bill.

*Clause 125* seeks to indemnify every Member of the Corporation against all losses and expenses incurred by him in, in relation to, the discharge of his duties under the Bill except such as have been caused by his own wilful act or default. It further seeks to indemnify a Member from the actions of the other Members or any other officer or employee of the Corporation, or from any loss or expenses resulting to the Corporation from the insufficiency or deficiency of value or title to any property or security acquired or taken on behalf of the Corporation or from the wrongful act of any debtor or any person under obligation to the Corporation or anything done in good faith in the execution of the duties of his office or in relation thereto.

*Clause 126* seeks to provide for protection of action taken under the Bill. It provides that no suit or other legal proceeding shall lie against the Corporation or the appropriate regulator, or any Member or officer of the Corporation or of the appropriate regulator for anything which is in good faith done or intended to be done in pursuance of the Bill or of any rule or regulations made thereunder.

*Clause 127* seeks to provide that nothing in the Competition Act, 2002, shall apply to any action taken by the Corporation or the appropriate regulator under Chapters X, XI and XII of the Bill.

*Clause 128* seeks to provide for the information sharing between the appropriate regulator and the Corporation and specifies the information to be shared between themselves, in relation to specified service providers classified in the categories of material, imminent, and critical risks to viability. It further provides that such information shall be shared on a reciprocal basis, for specified service providers classified to be at low and moderate risks to viability. It also requires the two authorities to *inter alia*, hold regular meetings and consult each other on a regular basis. It also requires the appropriate regulator to submit to the Corporation its findings on the inspections and the basis of classification of a specified service provider in any of the categories of risk to viability, in such manner as may be specified by regulations made by the Corporation.

*Clause 129* seeks to provide that the Corporation shall prepare, in such form and at such time in the financial year as may be prescribed, the budget for the next financial year, showing the estimated receipts and expenditure of the Corporation.

*Clause 130* seeks to provide that the Corporation shall prepare and submit to the Central Government, an annual report giving an account of its activities and of the activities which are likely to be undertaken by the Corporation during the next financial year and the Central Government shall cause such report to be laid before both Houses of Parliament

*Clause 131* seeks to empower the Central Government to supersede the Corporation if it is of the opinion that on account of a grave emergency, the Corporation is unable to discharge the functions and duties; or the Corporation has persistently defaulted in complying with any direction issued by the Central Government under the Bill or in the discharge of the functions and duties imposed on it by or under the provisions of the Bill and as a result of such default, the financial position of the Corporation or the administration of the Corporation has deteriorated; or circumstances exist which render it necessary in the public interest to do so. It also provides that upon such supersession, all the powers, functions and duties which may, by or under the provisions of the Bill, be exercised or discharged by or on behalf of the Corporation shall, until the Corporation is reconstituted, be exercised and discharged by such person or persons as the Central Government may direct.

*Clause 132* seeks to exempt central counterparties from application of certain provisions of the Bill. It empowers the Central Government, to direct by a notification that any of the provisions of the Bill (other than clause 142) or any notification or order issued or direction given there under (other than the provisions relating to the making of rules or regulations), specified in the notification shall not apply to a central counterparty or a class of central counterparties; or shall apply to a central counterparty or a class of central counterparties with such exceptions, modifications and adaptations, as may be specified in the notification and to lay such notification before each House of Parliament.

*Clause 133* seeks to bar the jurisdiction of courts and tribunals in respect of matters in respect of which the Corporation, the appropriate regulator, the Tribunal, or the Appellate Tribunal is empowered to act under the Bill. It further bars grant of injunctions or reversal by any court of tribunal in respect of actions taken under the Bill.

*Clause 134* seeks to deem the Chairperson, Members, officers and other employees of the Corporation, whenever acting, or purporting to act in pursuance of any of the provisions of the Bill, to be public servants, as per section 21 of the Indian Penal Code, 1860.

*Clause 135* seeks to provide that any amount collected by the Corporation or the appropriate regulator as a penalty shall be credited to the Consolidated Fund of India.

*Clause 136* seeks to exempt the Corporation from being liable to pay income-tax, service tax, and other taxes with respect to its, income, expenditure, profits or gains.

*Clause 137* seeks to provide that the provisions of the Bill shall have effect, notwithstanding anything inconsistent therewith in any other law for the time being in force or any instrument having effect by virtue of any law for the time being in force other than this Bill. It further provides that the provisions of this Bill shall override the provisions of any other law for the time being in force in relation to resolution or liquidation of a specified service provider. It also provides that nothing in this Bill, other than clause 47, shall affect the application of the Payment and Settlement Systems Act, 2007 and the Securities Contract Regulation Act, 1956 or regulations made thereunder, in respect of the central counterparties.

*Clause 138* seeks to provide that notwithstanding anything to the contrary in the Insolvency and Bankruptcy Code, 2016, the provisions relating to the information utilities under this Bill shall apply to the specified service providers in such manner as may be specified by regulations made by the Corporation.

*Clause 139* seeks to provide that nothing in the Companies Act, 2013 relating to liquidation shall apply to the liquidation of the Corporation under this Bill. It further provides that the Corporation shall not be placed in liquidation, except by an order of the Central Government and that the manner of the liquidation shall be determined by the Central Government in consultation with the Insolvency and Bankruptcy Board of India

and the manner of liquidation shall be guided by the Insolvency and Bankruptcy Code, 2016. It also lays down the manner of the distribution of the outstanding assets of the Corporation.

*Clause 140* seeks to empower the Central Government to make rules for carrying out the provisions of this Bill. It enumerates the various matters in respect of which such rules may be made by the Central Government.

*Clause 141* seeks to empower the Corporation and the appropriate regulator to make regulations, for carrying out the provisions of this Bill. It enumerates the various matters in respect of which such regulations may be made by the Corporation and the appropriate regulator.

*Clause 142* seeks to provide that every rule or regulation made under the Bill to be laid before each of the House of Parliament.

*Clause 143* seeks to empower the Central Government to make such provisions as may be necessary for removing any difficulty for bringing the provisions of the Bill into force. It further provides that every such order shall be laid before each of the House of Parliament.

*Clause 144* seeks to provide that the Corporation shall, in discharge of its functions and duties under this Bill, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time after giving to the Corporation an opportunity to express its views before any such direction is given.

*Clause 145* seeks to repeal the Deposit Insurance and Credit Guarantee Corporation Act, 1961, and to save certain actions done or taken or purported to have been done or taken under the repealed Act. The effect of repeal of the said Act, *inter alia*, include, the dissolution of the Deposit Insurance and Credit Guarantee Corporation and of the Board or any committees constituted under that Act, and requires every member of such Board or committee to cease to hold office as such; and that the employees of the Reserve Bank of India holding any office under the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, shall, for a period of one year, hold an office under the Corporation and on the completion of one year, and before the completion of two years, have the option to continue in the Corporation or return to the Reserve Bank of India and the transfer of the assets, liabilities, properties, undertakings, rights and claims of the Deposit Insurance and Credit Guarantee Corporation under the repealed Act, to the Corporation.

*Clause 146* seeks to make amendments to certain enactments specified in the Fourth Schedule in the manner specified in that Schedule.

## FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for establishment of a Corporation by the name of the Resolution Corporation.

2. Clause 21 of the Bill provides for the constitution of certain funds for the purposes of the Bill, namely, (a) a fund for deposit insurance provided by the Corporation to the insured service providers, called the Corporation Insurance Fund; (b) a fund for meeting the expenses of carrying out resolution of specified service providers, called the Corporation Resolution Fund; and (c) a fund for all other functions of the Corporation called the Corporation General Fund. It further provides that the Corporation shall utilise the amounts in each fund only for the purpose for which the fund was constituted.

3. Clause 23 provides for payment of grants and loans to the Corporation, after due appropriation made by Parliament by law in this behalf, on such terms, as the Central Government may think fit, for being utilised for the purposes of this Bill.

4. It is estimated that there would be an expenditure of approximately one hundred and forty crore rupees in the first year of establishment of the Corporation as initial establishment expenses, including salaries and allowances and other remuneration of Chairperson and Members (other than ex officio Members) of the Corporation and of its officers and other employees. This would include non-recurring capital expenditure of one hundred crore rupees and a further recurring expenditure of about forty crore rupees. Eventually, it is expected that major recurring expenses of the Corporation would be funded out of the fees and charges as may be received by the Corporation.

5. The Bill, if enacted and brought into operation, would not involve any other expenditure of a recurring or non-recurring nature from the Consolidated Fund of India.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 140 of the Bill empowers the Central Government to make rules with respect to the matters specified under sub-clause (2) which, *inter alia*, relate to the salaries and allowances and other terms and conditions of service of, the Chairperson and Members (other than *ex officio* Members); the form and manner of the annual statement of accounts and the intervals at which such accounts shall be audited; the criteria for designation of a financial service provider as a systemically important financial institution; the appointment of adjudicating officer and the manner of making inquiry for adjudication of penalty; the form and manner of filing of appeal and the fee to be accompanied; the criteria for appointment of valuer; and the form for preparation of the annual report by the Corporation.

2. Clause 141 of the Bill empowers the Corporation to make regulations with respect to the matters specified under sub-clause (2) which, *inter alia*, relate to the time and place of meeting of the Corporation and the procedure to be followed for the transaction of business at such meetings (including quorum at such meetings); the salary and allowances payable to and other terms and conditions of service of officers and employees of the Corporation; the manner of constituting committees and the number of members thereof; the manner of investing moneys by the Corporation; the amount of fee, the manner and time of payments; the amount and the manner of payment of premium; the manner and the period for submission of reports by systemically important financial institutions; the manner of payment of unpaid amount to a *bona fide* depositor; the time period for investigation, inquiry or inspection for the purpose of classification of a specified service provider in a category of risk to viability and the objective criteria for classification of specified service providers; the information relating to business which may be relevant for classification of material, imminent or critical risk to viability; the form and manner of resolution plan and the relevant information required by the Corporation; the form and manner of bail-in instrument or scheme and the liabilities or class of liabilities; the additional measures by the administrator in respect of Central Counterparties; the manner of receiving or collecting the claims of all consumers and creditors; the manner of determination of value of claims; the manner of realising security interest; the period and manner of distribution of liquidation assets and the amounts due to insurance policy holders; the conditions for voluntary liquidation; the manner of publication of recognition and enforcement order; the manner of adjustment of funds in case of repayment of amount to Corporation; the form and manner of sharing and exchange of supervisory information of certain categories of specified service providers; and the manner of application of the provisions relating to information utilities in the Insolvency and Bankruptcy Code, 2016 to the specified service providers.

3. Clause 142 of the Bill requires that the rules and regulations made under the proposed legislation be laid before each House of Parliament.

4. The matters in respect of which rules or regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANOOP MISHRA  
*Secretary General.*